

A "SUPERSOLDIER" AND THE PRESS.

by

Erwin A. Sharp

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A "SUPERSOLDIER" AND THE PRESS

A case study of how six metropolitan newspapers
reported allegations of war crimes and their cover-up
made by Lt. Col. Anthony B. Herbert, U.S. Army

by

Erwin A. Sharp

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CHAPTER I

INTRODUCTION

Vietnam has been called a tragic war, and perhaps it was. Historians will be better judges of that than anyone in 1974, just one year after the last American combat troops left that war-torn Southeast Asia country bordering on the South China Sea.

We do know, however, that Vietnam brought dissension to the United States which spread not only among the civilian populace, but also among the military services themselves. Vietnam, perhaps more than any foreign war in the history of the United States, resulted in a disillusioned public, a disillusioned media, and perhaps even a disillusioned government and military. It pitted American against American.

This thesis looks at just one such confrontation -- one between Lieutenant Colonel Anthony B. Herbert, an up-from-the-ranks Army officer with an outstanding fighting record, and his superior officers in Vietnam, Brigadier General John W. Barnes, Commander 173d Airborne Brigade, and his deputy commander, Colonel Joseph Ross Franklin. Although the con-

frontation began in Vietnam in 1969 and led to Lt. Col. Herbert being summarily relieved as Commanding Officer, 2d Battalion (Airborne), 503d Infantry, 173d Airborne Brigade, and sent home, it ultimately involved the disillusioned American public when Herbert charged Gen. Barnes and Col. Franklin in March 1971, with having covered up war crimes in Vietnam.

This study will investigate and evaluate the performance of six metropolitan newspapers in reporting the Anthony Herbert story. There are two conflicting views. On the one hand, Gen. Barnes and Col. Franklin contend that Herbert lied to them and was relieved of his command because he could not be trusted as a field commander. A damaging efficiency report and all the resulting problems for Herbert had come, the officers asserted, because of Herbert's performance of duty. Lt. Col. Herbert, on the other hand, contends that he was relieved of his command because he insisted that his superiors investigate war crimes Herbert had either seen or knew about, and had, in turn, reported to his superior officers during his 58 days in command. Gen. Barnes and Col. Franklin, Herbert charged, did not follow up on his reports to them and were therefore guilty of dereliction of duty. Herbert finally, in March 1971, filed formal charges against his commanding general and deputy commander for their dereliction of duty. The controversy was reported by the mass media generally from March 1971 until April 1973.

BACKGROUND

Anthony Bernard Herbert was born in the coal mining town of Herminie, Pa., the son of immigrant Lithuanian parents. He had two brothers and one sister. Both brothers served in the armed services during World War II -- one in the Army and one in the Navy.¹

Herbert assumed responsibility young. He worked on a farm at age 10 and by the time he was 12 -- thanks to a baptismal certificate that had been falsified by the local Priest -- he had a job in a local glass factory to help support his family. He enjoyed hunting with his father and was a crack shot.²

In May 1944, at the age of 14, again using the falsified document, Herbert enlisted in the Marine Corps, only to be returned home the day after he left when his true age was reported to the authorities. He finally enlisted in the Army in May 1947, at age 17, this time with his parents consent, even though he had not yet finished high school. After some 18 months in the Army, he was discharged and returned to Herminie, Pa., where he completed high school.³

¹Anthony B. Herbert, Lt. Col., Ret. with James T. Wooten, Soldier (New York, 1973), 8, 11.

²Ibid., 17

³Ibid., 22, 23, 36, 38

He left Hermanie again in February 1950 and reenlisted in the Army. By October of that year, still an Army private, he was in Korea. In February 1953, after some hard fighting, he was again discharged from the Army, but this time as a heralded and bemedaled Master Sergeant. He had won more than 20 decorations during the war, including medals from the Turkish and Korean governments. His U.S. Army medals included three Silver Stars and one Bronze Star, as well as several Purple Hearts and campaign medals. Herbert was also selected as the U.S. Army representative to tour United Nations countries.⁴

Following this tour, Herbert again returned home and again went to school -- this time the University of Pittsburgh -- and received his bachelor's degree in September 1956. That same month he accepted an appointment as second lieutenant in the Pennsylvania National Guard and was sent to Fort Benning, Ga., for the Army's Basic Infantry Officers course. Some five months later Herbert was offered a regular Army commission. "I thought it over for about ten seconds," Herbert recalled, "and said yes." After attending Ranger and Green Beret training and serving in various assignments around the globe, Herbert went to Vietnam for duty in 1968. He was promoted to lieutenant colonel in August that year.⁵

⁴Ibid., 24, 39, 61, 64

⁵Ibid., 64, 67, 70, 75, 91, 110

Herbert was highly regarded as a professional soldier. His record indicated he was an exceptional fighting man who had won promotions generally ahead of his contemporaries. Herbert wanted his own command in Vietnam, but was told that no command was immediately available. In the meantime, he was assigned as Inspector General of the 173d Airborne Brigade. He served in that capacity until February 1969 when he was assigned to command the 2d Battalion (Airborne), 503d Infantry, 173d Airborne Brigade. After some 58 days in command, however, Herbert was summarily relieved by the Brigade Commanding General, Brigadier General Barnes. Herbert received a damaging efficiency report, was refused redress after an official inquiry in Saigon, and was transferred back to the United States. This did not end his troubles. Herbert's orders to the Army's Command and General Staff College were cancelled, he was passed over twice for promotion to regular Army major (before finally being promoted to that rank after intervention by the Secretary of the Army), and finally requested voluntary retirement from the Army after what he claimed was "intolerable pressure" from the Army.

PUBLIC OPINION CLIMATE

There is considerable evidence to indicate the public accepted war crimes and officer misbehavior as the norm at the time Lt. Col. Herbert's allegations against Gen. Barnes

and Col. Franklin were made public in March 1971.

The Army was in the midst of a stormy period of public disenchantment. The names of Lieutenant William Calley and Captain Ernest Medina, who had been accused of having committed murder at My Lai, Republic of Vietnam, were synonymous with war crimes. By this time, also, as a result of the Calley court martial, the fact that war crimes were committed in Vietnam was established in the minds of the American people.

So, too, were illegal actions by high ranking military officers. Retired Army and former Brig. Gen. Earl F. Cole, while addressing a Senate hearing on March 10, said he had been the victim of slanderous accusers who had "destroyed" his career and his "very existence." Cole, 51, had been demoted to colonel and allowed to retire in 1971 after having been accused of wrong doings in Vietnam. Senators were told, according to a report in the Los Angeles Times, that Cole "sat atop a 'little Cosa Nostra' of free-spending American vendors and favor-taking PX officials. Witnesses testified that the billion-dollar purchasing empire he headed in 1966 to 1968 was rife with bribery, kickbacks, party girls, free trips and expensive gratuities."⁶

⁶Los Angeles Times, Mar. 11, 1971, 1:5

And there were others. The Atlanta Constitution reported in March that General William Westmoreland, U.S. Army chief of staff, had recommended that Major General Samuel W. Koster and his assistant, Brig. Gen. George H. Young, Jr., both be demoted one rank because of accusations concerning war crimes at Mylai.⁷ Brig. Gen. Young said he was being made the Army's political scapegoat.⁸ Gen. Koster was accused of having improperly investigated the Mylai massacre.⁹ Although the charges were later dropped against Gen. Koster, he was reduced in rank to brigadier general by Army Secretary Stanley R. Resor.¹⁰

As the Herbert story continued in the press, other examples of alleged misbehavior by Army officers were being reported. In April, newspapers reported the court martial of Col. Oran K. Henderson on charges of attempting to cover up the Mylai massacre.¹¹ In May, at Fort McPherson, Ga., Captain Eugene M. Kotouc was found innocent of maiming a Viet Cong suspect during an interrogation. Kotouc said he cut off the tip of a prisoner's little finger by accident. There were

⁷Atlanta Constitution, Mar. 19, 1971, 18A:1

⁸Atlanta Constitution, Mar. 20, 1971, 2A:7

⁹Atlanta Constitution, June 3, 1971, 1:7

¹⁰New York Times, June 3, 1971, 1:2

¹¹Atlanta Constitution, Apr. 2, 1971, 10A:1

also unconfirmed reports in the press that American troops had murdered 30 unresisting Vietnamese women and children during a retaliation raid following the death of an American soldier; that Brig. Gen. George S. Patton III, son of the World War II hero, had ordered badly wounded Vietnamese prisoners be kept alive just long enough to question "and then let them die"; and that military interrogators in Vietnam had routinely used electric telephone hookups to torture Vietnamese prisoners and that some prisoners had even been dropped from helicopters.¹²

In June 1971, the Army charged Brig. Gen. John W. Donaldson with murdering six Vietnamese civilians and assaulting two others between November 1968 and January 1969. Also Lt. Col. William J. McCloskey, operations officer under Gen. Donaldson, was charged with the murder of two Vietnamese civilians in March 1969. The reports said that the last time a brigadier general had been charged with war crimes was in 1901.¹³ It seemed that officer integrity within the Army had reached a new low.

All of this, it seems likely, may have firmly implanted the idea in the minds of American people, and perhaps even in the minds of working reporters, that war crimes were common-

¹²Los Angeles Times, May 2, 1971, G:4:1

¹³Chicago Tribune, June 3, 1971, 1:4

place in Vietnam and that senior Army officers in Vietnam were often guilty of wrong doing.

The confidence of the military obviously had been eroded. Harris Public Opinion Polls showed this. In 1966, and again in the fall of 1971 after the reports of war crimes and wrong doings by military officers had been reported in the media for several months, Harris asked a cross section of American people: "As far as the people running these institutions are concerned, would you say you have a great deal of confidence, only some confidence, or hardly any confidence at all in them?" Here is what Harris discovered about the Military:

<u>THE MILITARY</u>	<u>GREAT DEAL</u>	<u>ONLY SOME</u>	<u>HARDLY ANY</u>	<u>NOT SURE</u>
1966	62%	28%	5%	5%
1971	27%	47%	20%	6%

In 1966, military leaders had been the third most respected group in the United States, behind only medicine and banks and financial institutions. (72% and 67% respectively). In 1971, the military was tied for sixth with major companies and religion.¹⁴

Soon after the Herbert story broke in the press, the Army specifically had been singled out for a Harris Poll. By a 49 to 47 per cent plurality, the American people expressed

¹⁴New York Post, Oct. 25, 1971

a negative impression of the Army. Louis Harris said that although a sizeable majority of the public see a need for the Army, "the trial of Lt. William L. Calley Jr. had been a catalyst for critics of the service." The survey found that by 82 to 10 per cent, the public agreed that the draft had produced "a lot of soldiers who don't want to fight." By 61 to 25 per cent, the respondents believed the Army's discipline had broken down when so many soldiers were using drugs, and by 54 to 16 percent, those surveyed agreed that "the Army's clubs for soldiers in Vietnam are shot thru with corruption and graft."

A cross section of the United States were asked, "How would you rate the job being done by the people running the U.S. Army today -- excellent, pretty good [both positive], only fair, and poor [both negative]." The following resulted:

	<u>Positive</u>	<u>Negative</u>	<u>Not Sure</u>
Nationwide	47	49	4
<u>BY AGE</u>			
Under 30	42	55	3
30-49	48	48	4
50 and over	52	43	5
<u>BY RACE</u>			
White	49	47	4
Black	38	54	8
<u>BY SIZE OF PLACE</u>			
Cities	41	53	6
Suburbs	47	48	5
Towns	55	42	3
Rural	49	47	4

In the same survey, Harris discovered some positive aspects. By 85 to 9, the respondents believed "the Army is a necessary first line of defense. . . ."; by 68 to 19 per cent, that "American fighting men are well-trained and well disciplined,"; and by 62 to 28 per cent, that "the Army is a well-run, efficient fighting organization."¹⁵

There is also other evidence to indicate the decline of Army prestige as a result of Vietnam. The Economist of London said in October 1971 that "It is just now beginning to be understood by the public that the Army has suffered no less than the rest of American society for the war and an excellent case can be made that the Army is in fact the main casualty." The article suggested that the Army itself "increasingly comes to resemble one of those sleek American conglomerates -- all purposeful corporate image on the outside and chaos within."¹⁶

The Washington Post in September 1971 summed up the Army problem this way:

What the Army faces. . . is a problem of even greater magnitude. Within the last year alone a series of widely publicized events have combined to further intensify American anti-military feeling. Mylai and Calley court-martial and the documentation of American

¹⁵Chicago Tribune, Apr. 19, 1971, 1A:1:5

¹⁶Los Angeles Times, Oct. 17, 1971, J:3:7

atrocities; scandals touching the Army's top enlisted man and the Commandant of West Point [Gen. Koster]; the public disciplining of generals ('God help us if we have any more of these court-martials,' one Pentagon officer said with passion.); the scene of veterans returning home to throw the medals they earned in combat toward the United States capitol steps; the voices of other veterans speaking bitterly about their experiences with body counts, use-less Hamburger Hills and napalming of women and children; 'fragging,' or assaults and murders, against officers and non-coms by other American soldiers, and alarming evidence of the increasing use of hard drugs -- these are among them.¹⁷

An Army general with more than 30 years service saw it this way: "For the military organization to function properly, you've got to have. . . iron discipline or perfect leadership. You've got to have one of the two, and at the moment we don't have either."¹⁸

Even the Congress was publicly attacking the Army. According to a UPI report, ". . . the Senate investigations subcommittee. . . dressed down the Armed services -- particularly the Army -- for sloppy law enforcement to the point of covering up and whitewashing scandals to protect high-ranking officers."¹⁹

The Army was well aware of the problem and in April 1971,

¹⁷ Washington Post, Sep. 12, 1971, 1:1

¹⁸ Washington Post, Sep. 15, 1971, 1:1

¹⁹ Los Angeles Times, Nov. 2, 1971, 1:1

right after the Calley trial, it distributed a so-called "White Paper" to every Army installation in the world. It said in part:

Even though the legal action [Calley trial] was painful and difficult, the Army would have failed to meet its obligations to the law of our nation had it not acted.

The Department of the Army has had a moral and legal obligation to adopt a continuing policy of investigating fully all substantive allegations of violations of the law of war involving American personnel.

Every allegation of misconduct on the battlefield -- regardless of the rank or position of the person purportedly responsible -- must be thoroughly explored.

Maj. Gen. Winant Sidle, the Army Chief of Information, said the paper was not intended as a defense of the Army's position in the Calley sentence.²⁰ Because it came some three weeks after Herbert filed his charges, it appears more likely that it may have been a declaration of the Army's position regarding charges brought against Army personnel after the Calley trial -- specifically those charges that had been brought against Gen. Barnes and Col. Franklin.

SIGNIFICANCE OF STUDY

Daily newspapers are a primary source of information for the American people and obviously help shape opinions. Millions of Americans each day learn about stories, such as the Herbert

²⁰Atlanta Constitution, Apr. 3, 1971, 1:1

case, through their newspapers. Newspapers are expected to furnish these readers news that is factual and based on reliable sources. This is not always easy. Professor David Host at Marquette University has said that "the task of keeping the citizenry adequately informed. . . is today broader, more complicated, and more difficult than ever before."²¹

Working journalists also recognize the problems and the obligations. Tom Wicker of the New York Times staff said.

So much of what is written as fact necessarily is not so much fact as what, to the best of your opinion, you believe is fact. And they are not necessarily the same thing at all.²²

The White House is supposed to be the 'Bully Pulpit.' Well the press is a bully pulpit, you know. I'm not talking so much now about slanting news, or anything of the sort, as I am talking of trying to approach news free of the urge or the pressure to sensationalize or to conform to a popular notion. I think the press goes much too far in giving people what they want.²³

Edward P. Morgan, noted radio commentator, once said that "We Americans pride ourselves on being the best informed nation in the world. Too, often, I'm afraid, sometimes without

²¹David Host, The Citizen and the News (Marquette University College of Journalism, 1961), xxvi

²²George R. Berdes, Friendly Adversaries: The Press and Government (Marquette University College of Journalism, 1969), 107

²³Ibid., 109

our realizing it, we are uninformed or misinformed, and most of the times we are at best only half informed."²⁴

Harvey Schwandner, editor of the Milwaukee Sentinel, believes "a great newspapers. . . tells the truth as best it can. . . . To tell the truth, the paper must have integrity and dedication. . . . The paper must dig and investigate. The slightest hint of wrong-doing must bring down the relentless probing of the reporters."²⁵

This statement emphasizes the newspapers' responsibility to ferret out facts so as to bring before the American people information about wrong-doing that may not otherwise become public. John Hohenberg points out another problem in his look at the journalism profession -- that of sorting out the truth, making a point particularly relevant to this study.

. . . where the news is based on rival propaganda claims, exaggeration for striking effect, or deliberate untruths put forward by eminent persons, groups, or nations, then the press is at a disadvantage because it has as yet devised no machinery for consistently dealing with such matters. . . . But generally the rule that is followed, as stated in various forms by authorities from John Milton to John Knight, requires publication of truth and falsehood alike on the hopeful assumption that the public will recognize the former and turn its back on the latter.²⁶

²⁴Edward P. Morgan, "Mass Communication and their Obligations to Society," in David Host's, The Citizen and the News, op. cit., 67

²⁵Arville Schaleben, "The News and You," in David Host's, The Citizen and the News, op. cit., 84

²⁶John Hohenberg, The News Media: A Journalist Looks at his Profession (New York, 1968), 89

Finally, as Francis E. Rourke has pointed out in Secrecy and Publicity, there is also the problem of government secrecy which makes a reporter's job more difficult and truth harder to obtain. "Where discreet silence is called for as official policy," Mr. Rourke says, "it may be very difficult to . . . face . . . insistent demands for information from newspaper reporters."²⁷

But what about the self imposed requirements placed upon the media by themselves? In addition to expectations of the American public, newspapers and journalists are also bound by codes of ethics of the American Society of Newspaper Editors (ASNE) and the Society of Professional Journalists, Sigma Delta Chi (SDX).

Article four of the ASNE code requires:

SINCERITY, TRUTHFULNESS, ACCURACY -- Good faith with the reader is the foundation of all journalism worthy of the name.

1. By every consideration of good faith a newspaper is constrained to be truthful. It is not to be excused for lack of thoroughness or accuracy within its control, or failure to obtain command of these essential qualities.²⁸

The SDX code of ethics regarding accuracy and objectivity is similar:

²⁷Francis E. Rourke, Secrecy and Publicity, Dilemmas of Democracy (Baltimore, 1961), 202

²⁸Problems of Journalism, Proceedings of the 1973 Convention, American Society of Newspaper Editors (New York, 1973), 11

ACCURACY AND OBJECTIVITY -- Good faith with the public is the foundation of all worthy journalism.

1. Truth is our ultimate goal.
3. There is no excuse for inaccuracies or lack of thoroughness.
5. Sound practice makes clear distinction between news reports and expressions of opinion. News reports should be free of opinion or bias and represent all sides of an issue.²⁹

Arthur Edward Rowse in Slanted News warns that "Discussing newspaper objectivity -- and thereby implying that it needs discussing -- is a risky undertaking for anyone. . . . Doubting a newspaper's objectivity has become almost as risky as doubting a woman's virtue."³⁰ Just as newspapers and journalists are expected, as well as ethically required, to provide only the most accurate and factual information available and are "not to be excused for lack of thoroughness," journalism scholars are likewise responsible to critically evaluate press performance. Their professional obligations and society's well being requires it.

²⁹The SDX code of ethics was not in effect at the time the Herbert story was reported, but the responsibilities and desire on the part of reporters to be accurate and objective can be assumed. The SDX code was adopted by the 1973 National Convention at Buffalo, N.Y., on Nov. 16, 1973, after a year-long study. It is the first major new national code of ethics for journalists since the Canons of Ethics of the ASNE were adopted in 1923. Milwaukee Journal, Dec. 30, 1973, Accent Section, 1:4

³⁰Arthur Edward Rowse, Slanted News: A case Study of the Nixon and Stevenson Fund Stories (Boston, 1957), preface.

The purpose of this study in press performance is to test the accuracy and reliability of information printed in six metropolitan newspapers about war crimes and their cover-up reported in 1971 by Lt. Col. Herbert.

The period to be studied begins in March 1971 when Lt. Col. Herbert told media representatives in Atlanta, Ga., that he planned to file charges against Brig. Gen. Barnes and his deputy, Col. Franklin, for "dereliction of duty, misprison (concealment) of a felony and failure to obey regulations."³¹

According to Lt. Col. Herbert, he had seen, or had knowledge of, numerous war crimes that had been committed in Vietnam. He said he had reported these crimes to either Gen. Barnes or Col. Franklin while in Vietnam. Neither officer, Herbert charged, followed up his reports and both were, therefore, guilty of covering up the war crimes. [Neither officer was charged with having actually committed any war crimes.] Lt. Col. Herbert said he filed the cover-up charges personally against the two officers rather than wait for the Army to officially press charges because he believed the Army was deliberately delaying its investigation until the statute of limitations could expire.³²

³¹New York Times, Mar. 12, 1971, 1:7

³²Ibid.

Following his initial disclosure to Fred Farrar of the Chicago Tribune in early March 1971, Lt. Col. Herbert discussed freely with other media representatives numerous war crimes which he said he had reported to either Gen. Barnes or Col. Franklin. At the same time, to protect the rights of anyone accused as a result of the investigations, spokesmen for the U.S. Army, as well as Gen. Barnes and Col. Franklin, the principals in the case, refused to discuss the allegations until the Army's investigation was completed. In July 1971 all charges were dropped against Col. Franklin and some three months later all charges were also dropped against Gen. Barnes. On November 5, 1971, the Army released its first fact sheet on the Herbert case. At about the same time, Gen. Barnes also began to grant interviews.

From March 1971 to April 1973, there was sporadic coverage of the Herbert affair. There was an initial surge of coverage when Herbert filed his charges in March 1971; there was some coverage when charges were dropped against Col. Franklin and Gen. Barnes in July and October respectively; another surge in November 1971 when Herbert claimed he was being harassed by the Army, the Army began to publically discuss the case and the principals began granting interviews with the press; and then almost nothing more until early 1973 when Herbert's Soldier was published.

Soldier reviewed Herbert's life in the Army with parti-

cular emphasis on his experiences in Vietnam. New York Times reporter James T. Wooten assisted Herbert write his book. Many of the war crimes that had already been reported in the press were again described in detail in the book.

Shortly after the book was released, CBS-TV ("Sixty Minutes") aired an investigative report which questioned many of the statements and claims made by Herbert in Soldier. Mike Wallace, the program narrator, provided considerable evidence during the 30-minute segment of the network show which indicated Herbert may have been lying about several incidents he described in his book -- many of which had already been discussed with media representatives and published as truths in newspaper accounts.

A month after the CBS program, Herbert's book, Soldier, appeared for the first time on the New York Times 10 best seller list in the non-fiction category.³³ It remained on the list for five consecutive weeks. It was nine on the list for three of the five weeks and number 10 the other two weeks. Then, after an absence of four weeks, Soldier returned for a sixth week on April 29, but did not make the list again.³⁴ It is impossible to say what effect the CBS show may have had on the sale of Soldier. It could have either aided its climb

³³New York Times, Mar. 4, 1973, Book Review Section, 45:1

³⁴New York Times, Apr. 29, 1973, Book Review Section, 33:1

to the best seller list or prompted its decline. There is no hard evidence to indicate either.

HISTORICAL STANDARD

The primary source of material which shows the results of the U.S. Army investigation of Lt. Col. Herbert's allegations is a lengthy "book review" compiled by Headquarters, U.S. Army Criminal Investigative Command. It lists each charge brought by Herbert and provides the results of U.S. Army investigations which were conducted by some 48 criminal investigators and administrative personnel in a worldwide investigative effort that spanned seven months. Some 333 persons were interviewed in 30 of the 48 continental states, as well as in Hawaii, the Philippine Islands, Vietnam, Okinawa, Australia, New Zealand, Mexico and Germany. The results of this investigation were also the basis for two fact sheets, dated Nov. 5, 1971 and Dec. 7, 1971, which also discuss results of the extensive investigation. These are the only available documents from official sources which provide this information. Although not complete as an historical standard, it is accepted as such because it is based on lengthy U.S. Army investigations and is unquestionably the best and most reliable information available at this time. The danger of bias is recognized. However, because these U.S. Army findings provide the best standard available at this time, this risk must be accepted to accomplish what will be a useful study in

press performance. The U.S. Army has refused to release the actual testimony taken during its seven-month investigation.

Evidence developed by CBS-TV, and aired on the Feb. 4, 1973, "Sixty Minutes" show is also part of the historical standard. This independent research supplements and strengthens some information that was also developed by the U.S. Army Criminal Investigative Command. This evidence will be gleaned from both Lando's article in The Atlantic Monthly as well as the transcript of the "Sixty Minutes" show. Barry Lando and researcher Mark Fredriksen spoke with more than 125 persons who had known Herbert throughout his career. Some of them were mentioned by Herbert in Soldier, while others were not. Lando claims to have interviewed a great number of persons suggested by Lt. Col. Herbert.³⁵

OBJECTIVE

The purpose of this study is to measure the press performance of six metropolitan daily newspapers in reporting the Herbert story by comparing the material published with the historical standard.

The study will attempt to answer two basic questions:

1. When compared to the historical standard, did the six selected newspapers provide factual information about war

³⁵ Barry Lando, "The Herbert Affair," The Atlantic Monthly, May 1973, 76.

crimes and their cover-up alleged by Lt. Col. Herbert?

2. Was the information reported by the six selected newspapers about war crimes and their cover-up alleged by Lt. Col. Herbert, the most accurate and reliable information reasonably available?

It will test the hypothesis that working newspaper reporters accepted with little question the allegations made by Lt. Col. Herbert and in many cases newspapers presented unsubstantiated allegations to the American people as fact.

PREVIOUS WORK

Although the Herbert case received wide and immediate coverage by newspapers at the time he leveled his charges and continued to provide coverage as Lt. Col. Herbert pressed his case publically, little has been written about the performance of the press during this period that would answer the questions posed by this study.

The only article that deals directly to the point of press performance is one by Lee Ewing in the September/October 1973, Columbia Journalism Review, entitled "Col. Anthony Herbert: The unmaking of an accuser." Although Ewing describes the press performance as a "major turnabout," his research lacked depth and systematic accumulation of data. It appears his article was written from available clippings from miscellaneous newspapers and magazines across the United States.

Barry Lando, producer for the Feb. 4, 1973 CBS-TV program "Sixty Minutes," also wrote a comprehensive article titled, "The Herbert Affair," for The Atlantic Monthly which described his year-long investigation of the Herbert case. It provides independently obtained data regarding some of Herbert's claims.

A primary source of information for Herbert's side of the controversy is Soldier, which includes discussions of numerous war crimes he claims to have reported to Gen. Barnes and Col. Franklin. It also discusses Herbert's relationship with the two officers and other members of the Brigade staff.

During the period March 1971 through February 1973, there was sporadic, but wide coverage of the Herbert affair in the media. Six major metropolitan newspapers were selected for this study. They are the New York Times, Washington Post, Chicago Tribune, St. Louis Post-Dispatch, Atlanta Constitution and Los Angeles Times. These newspapers were arbitrarily selected to enable coast-to-coast coverage to be determined and studied. The combined circulation of the six newspapers is 3,583,662 daily and 5,342,568 on Sunday.³⁶

There are other works that are unrelated to the Herbert case, but which were helpful in doing this study. They include, "Vietnam Reporting: Three years of Crisis" by Malcolm W.

³⁶1972 Ayer Directory of Publications (Philadelphia, 1972), passim.

Browne, Associated Press, and "The Story Everyone Ignored" by Seymour N. Hersh.³⁷ Both provided an insight into press reporting of Vietnam.

DEFINITIONS

Accuracy -- This describes how well the information printed by the selected newspapers conformed to the facts as established by the historical standard.

Reliability -- This relates to the source of the information more than to the information itself. Did the information published come from a source or sources which could reasonably be expected to know the true facts and express them? Reliability of a news story is enhanced when comments from both sides of an issue are published.

METHODOLOGY

To answer the basic questions posed by this study, the information about the Herbert case published in the six selected newspapers will be compared to the facts as determined by U.S. Army investigators as well as by independent investigation by CBS-TV Producer Barry Lando and his investigative staff.

After completion of the newspaper review for the period

³⁷ Alfred Balk and James Boylan, Our Troubled Press, Ten Years of the Columbia Journalism Review (Boston, 1971), 99, 119.

March 1971 through April 1973, a letter to the managing editor of each newspaper asked him to comment on the findings regarding his particular paper. The newsmen's responses will be discussed in the epilogue.

In obtaining information for this study, the following primary source materials were used:

1. Soldier, by Anthony Herbert with James T. Wooten.
2. Newspaper files at the Wisconsin State Historical Society of New York Times, Washington Post, Chicago Tribune, St. Louis Post-Dispatch, Los Angeles Times, and Atlanta Constitution.
3. Government documents from the files of the U.S. Army Chief of Information, Department of the Army, Washington, D.C. The primary documents are the "book review" and the fact sheets cited in the discussion of the historical standard.
4. The Congressional Record which contains relevant information placed there by Senator Barry Goldwater (R-Ariz.).
5. Correspondence of individuals involved in the Herbert case as necessary for clarification.

ANALYSIS OF DATA -- By the traditional historical method -- researcher's personal point-by-point evaluation of the available data to determine conclusions.

CHAPTER II

CHARGES IN PLACE

Fred Farrar, Washington correspondent for the Chicago Tribune, broke the Lt. Col. Herbert story on Mar. 11, 1971, with a page one, by-lined article. The banner headline screamed, "Atrocity Coverup Charged." A one-column, three line, sub-head added, "Officer Accuses Prober." The story stemmed from Farrar's interview with Herbert at his Atlanta, Ga., home earlier in the month.¹

On the same day in the New York Times, Robert M. Smith had a less detailed by-lined report about the allegations made by Lt. Col. Herbert from "sources" in Washington. Smith said Herbert had actually made the cover-up charges in October 1970² "in the wake of Mylai." Herbert reportedly told authorities at Fort McPherson, Ga., that he had first

¹Chicago Tribune, Mar. 11, 1971, 1:1

²According to an Army Fact Sheet dated Dec. 7, 1971, Lt. Col. Herbert "made a sworn statement to the Third Army Inspector General alleging war crimes in the area of operations of his former unit" on Sep. 28, 1970, "approximately eighteen months after his relief from command."

reported the incidents in Vietnam but they had apparently not then been acted upon.³

These initial reports were preludes to more detailed articles about the Herbert case which were published sporadically during the next two years. The initial reports which discussed the charges against Brig. Gen. John W. Barnes, Commander 173d Airborne Brigade, and Col. Joseph Ross Franklin, his deputy commander, appeared in all papers studied during a six-day period March 11-16. New York Times published five separate stories, the Chicago Tribune, Washington Post, and Atlanta Constitution, each ran three articles, while the St. Louis Post-Dispatch and the Los Angeles Times each published two reports. During this initial phase, all newspapers studied except the St. Louis Post-Dispatch assigned a staff writer to the story which resulted in at least one by-lined report each.

The Post-Dispatch used a New York Times News Service story on March 12 and followed up with an Associated Press report on March 16. The Atlanta Constitution printed a locally written story on March 13, a New York Times News Service article by James T. Wooten on March 14 and a by-lined article by staff writer Diane Stepp on March 16. The Los Angeles Times published an AP report on March 12 and a by-lined piece

³New York Times, Mar. 11, 1971, 25:1

by staffer Kenneth Reich on March 16. The Washington Post used a report compiled from the wire services on March 12, a Post-prepared piece on March 13 and a by-lined article by staff writer Philip Carter on March 16. The Chicago Tribune opened with the Fred Farrar article on March 11, followed by an AP report on March 12 and closed the opening phase of the story on March 16 with a second report by Farrar. The New York Times hit the ground running on the story. It published an article nearly every day during this initial phase. Robert M. Smith published his "sources" report on March 11, James T. Wooten in Atlanta authored articles on March 12 and 13, the 14th was primarily a re-hash of earlier material, and then a New York Times-prepared piece from Atlanta on March 16.

RELUCTANT BEGINNING

The initial media report by Fred Farrar for the Tribune reported that Lt. Col. Herbert intended to file charges against Col. Franklin. It did not mention that charges were also being filed against Col. Franklin's superior, Gen. Barnes. This may have stemmed from an initial reluctance by Herbert to press his case through the media. If Herbert was, in fact, not sure this was the appropriate course of action to pursue, he may not have volunteered the information about Gen. Barnes to Farrar during this first media interview.

Herbert told Col. L. B. Mattingly, Third Army Information Officer at Fort McPherson, Ga., on Mar. 3, 1971 that Fred Farrar would be in Atlanta the following day to interview him concerning the allegations he had made in September 1970 about war crimes in Vietnam.⁴ At that time Herbert indicated a reluctance to say much to Farrar. He told Col. Mattingly that he was happy with the progress being made by the Criminal Investigation Division (CID) and did not want to engage in public dialogue on the case at that time.⁵

Herbert was also concerned about the possible effect such an interview might have on the official investigation. He told Col. Mattingly if the scheduled interview would create "investigative problems," he would be "less inclined to talk to Farrar." A spokesman for CID said Herbert was already aware of what he could do and provided him no further guidance.⁶

Lt. Col. Herbert also indicated in an Associated Press interview on March 11 that he did not intend to press charges

⁴This meeting may have been arranged at the initiative of Mr. Farrar. The query record in the office of information, Department of the Army, indicates that Mr. Farrar first queried them on March 1 about Lt. Col. Herbert's allegations.

⁵Telephone or Verbal conversation record, DA Form 751 (1 Apr 66), dated Mar. 3, 1971, of conversation between Col. Mattingly, 3d Army, and Lt. Col. Heath, Department of the Army.

⁶Ibid.

immediately against the two officers. He said the Army had informed him that its investigation would be complete by April 1. Herbert said, "if the Army's Criminal Investigation Division does not file formal charges against the two officers by April 1," he would go into Federal court to press criminal charges against them.⁷

This comment to AP was inconsistent with what was reported by the New York Times and Chicago Tribune. It leads to the speculation that Lt. Col. Herbert may have, indeed, been reluctant to discuss the facts and his guarded statements resulted in inconsistencies. It also breeds speculation that although at first reluctant to discuss the case, he became caught up in the "cause" as a result of the heavy media interest in, and acceptance of, his allegations.

The Tribune's initial report on March 11 keyed on the fact that Col. Franklin, who had been a member of the Peers Commission to investigate the possibility of a coverup at Mylai, was now being charged with a coverup himself. Farrar reported in this initial report that Franklin, who had been instrumental in getting Herbert fired from his job in Vietnam in 1969, had himself been fired on Sep. 15, 1970 from his most recent job in Vietnam. "Pentagon sources said he was relieved for 'inadequate performance of duty'." Farrar also recognized

⁷Chicago Tribune, Mar. 12, 1971, 1A:7:3

in his story that "apparently there was a personality conflict between the two men." He said Herbert believed Franklin was responsible for his being relieved of command of the 2nd Battalion, 503d Infantry, which he held from Feb. 6, 1969 to Apr. 4, 1969.⁸

Both Farrar and Smith reported that Herbert was a former enlisted man who had been decorated in the Korean war. Smith called the former 22-year-old master sergeant the most decorated soldier in the Korean war.⁹

Both Farrar and Smith also indicated that Herbert had made 19 criminal allegations. Smith said the criminal misconduct ranged from beating of prisoners by American troops to the killing of prisoners by South Vietnamese military in the presence of one or more American advisers. He added that "reliable sources" indicated the Army's Criminal Investigative Division had found witnesses who could support several of the allegations.

⁸Chicago Tribune, Mar. 11, 1971, 1:1. Col. Franklin had, by this time, returned to Vietnam for a subsequent tour of duty.

⁹New York Times, Mar. 11, 1971, 25:1. Maj. Gen. Winant Sidle, U.S. Army chief of information, in a letter to the Editor of Playboy magazine pointed out that "it is not possible to know whether he [Herbert] was the 'most decorated enlisted man' in the Korean war." Gen. Sidle said that "without in any way attempting to equate the various awards for valor, I would point out that there were 59 Medals of Honor awarded to Army enlisted men in that war, plus a significantly greater number of Distinguished Service Crosses, neither of which Herbert received. . . . Well decorated I'll buy; most decorated just can't be supported."

Herbert told Farrar that the charges to be brought against Col. Franklin involved incidents of the murder of prisoners, "including cutting the throat of a female Viet Cong suspect," as well as the torture of prisoners by both American and South Vietnamese troops.¹⁰

Farrar, after interviewing Herbert, solicited the following Army comment regarding the charges:

The allegations of Lt. Col. Herbert are still the subject of an active investigation by the U.S. Army CID Agency. For this reason it would be inappropriate to answer your specific questions.

It can be reported that of the total of 19 criminal allegations made by Lt. Col. Herbert, two had been the subject of previously completed CID investigations, five more have been investigated and determined to be unfounded, while the balance of 12 are still being actively investigated.¹¹

ST. VALENTINE'S DAY MASSACRE

Throughout the six-day period of the initial reports, Herbert discussed with reporters the details of the atrocities he said he had reported to Army authorities in Vietnam.

On Feb. 14, 1969, according to a Chicago Tribune report, a unit from Herbert's battalion took Viet Cong prisoners in the village of Cu Loi. Herbert said he ordered one of his

¹⁰Chicago Tribune, Mar. 11, 1971, 1:1

¹¹Ibid., 2:4

sergeants to turn the prisoners over to South Vietnamese troops working in the area with government police. As the sergeant was returning, Herbert said, he heard firing from the direction in which the prisoners had been taken and headed that way. "I walked into a clearing and there were four Vietnamese males lying dead on the ground. One of them I recognized as a big guy we had captured that morning."¹²

Herbert said there was a group of South Vietnamese standing around and they had an American lieutenant adviser with them. "One of the Vietnamese had a young woman by the hair and was holding a knife at her throat. There was a child holding on to the woman's leg. There was a second child lying face down screaming while a Vietnamese soldier used his foot to push the child into the sand."¹³

Herbert claims he pushed the American adviser aside and shouted to the Vietnamese with the knife to stop. "But he just looked me right in the eye, cut the woman's throat, and let her fall into the sand." Herbert said he was furious at the lieutenant for allowing it to happen. The lieutenant contended that he was only an adviser and that the Vietnamese were not under his command.¹⁴

¹²Ibid.

¹³Ibid.

¹⁴Ibid. The Army later verified that Vietnamese troops were not under the command of American advisers. The American advises, but does not command.

James T. Wooten, following his interview with Herbert for the New York Times, related a similar story of the incident. He reported that Herbert and his men had captured some 15 persons after a "torrid battle" which left more than 20 enemy dead. In describing the killing of the female detainee, Herbert said, "Her baby was screaming and clutching at her leg and her other child was being suffocated by a South Vietnamese infantryman who was shoving his face into the sand with his foot."¹⁵

Herbert told Wooten that after the woman was killed, he again took charge of the detainees and sent them with one of his sergeants to a nearby landing zone for evacuation. Shortly after the sergeant left with the detainees, Herbert said he heard firing from that direction. A short time later the sergeant "came running back and told me that the American lieutenant and the South Vietnamese had jumped him, overpowered him, and killed all the detainees. I went over there and there were the bodies. They were all dead, the children, too."¹⁶

When this incident was reported to Col. Franklin, according to Herbert, "he said I was either exaggerating or

¹⁵New York Times, Mar. 12, 1971, 16:5

¹⁶Ibid., 1:7

lying." Franklin said Herbert had "interfered with the adviser as he was doing his duty." Herbert also said Franklin told him he did not understand the nature of guerrilla warfare.¹⁷

Army investigations of the incident revealed that on Feb. 14, 1969, in what Herbert termed the St. Valentine's Day Massacre, unidentified South Vietnamese troops accompanied by an American adviser, did kill approximately eight Vietnamese detainees. This happened during a combat operation of the 2d Battalion (Airborne), 503d Infantry, 173d Airborne Brigade at Cu Loi, in Quang Nhia Province, Republic of Vietnam.¹⁸

Sergeant First Class Wallace A. Worden, in a sworn statement, said he witnessed the killing of a detainee by Vietnamese troops and that an American adviser was present at the time. He said he attempted to prevent further killing but when he was unable to stop them, he reported the incident to Lt. Col. Herbert. Another detainee was killed, he said, before he left the area.¹⁹

Capt. Lawrence A. Potter III, a doctor with the 173d Airborne Brigade said in a sworn statement that he saw Herbert

¹⁷Chicago Tribune, Mar. 11, 1971, 1:1

¹⁸Review of Soldier, Headquarters, U.S. Army Criminal Investigative Command (Washington, 1973), 31.

¹⁹Ibid.

prevent Vietnamese National Police from shooting detainees which had been captured by U.S. forces.²⁰

There were also other witnesses who indicated they had knowledge of the killings. One was Maj. Ernest L. Webb, Herbert's operations officer, who in a sworn statement, said he specifically recalled having monitored a radio transmission when a lieutenant platoon leader reported to Herbert that the Vietnamese police were killing prisoners.²¹

The American adviser, however, who was out of the Army when he talked to Army investigators, stated that he recalled the operation on Feb. 14, 1969, but emphatically denied that he had either witnessed or heard of any detainees having been murdered. The lieutenant declined to reduce his statement to writing.²²

Although several individuals interviewed said they had witnessed the shooting of the detainees by Vietnamese police on Feb. 14, 1969, no one substantiated the execution of the female detainee as reported by Herbert.²³

Because all subjects in the CID report of investigation

²⁰Ibid., 32

²¹Ibid.

²²Ibid., 33

²³U.S. Army Fact Sheet, Office of Information, Department of the Army (Washington, Dec. 7, 1971), 2.

were Vietnamese nationals, results of the investigation were forwarded to the Commanding General, U.S. Army Vietnam, for appropriate Republic of Vietnam officials.²⁴

The Army investigators failed to discover any evidence or witnesses to substantiate Herbert's claim that he had reported the February 14 incident to Col. Franklin.²⁵ There were, however, witnesses to the contrary.

Col. Franklin said "at that period I was in the Illikai Hotel in Honolulu, Hawaii, on R&R [rest and recreation]. I did not return to Vietnam until 16 February, two days after this alleged incident."²⁶ This was confirmed by hotel records in Honolulu which indicated that Col. Franklin had been registered until 7:30 p.m. on February 14 which was 3:30 p.m., February 15 in Vietnam.²⁷

While investigating this aspect of Lt. Col. Herbert's story, CBS-TV reporters, preparing for a Feb. 4, 1973 "Sixty Minutes" show, obtained a cancelled check written and dated by Col. Franklin in Hawaii when he checked out of the hotel on February 14 (February 15 in Vietnam). CBS reporters gathered

²⁴Review of Soldier, op. cit., 33

²⁵U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 3

²⁶Congressional Record, 93d Congress, 1st Session (1973), S3493

²⁷U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 3

further substantiation of Franklin's story from two Army officers who actually flew back to Vietnam with Col. Franklin. The two officers said they did not arrive at Camranh Bay, Republic of Vietnam until February 16, local time. CBS also went one step further. The reporters talked to several persons who Herbert claimed in Soldier could testify that Franklin was in Vietnam on February 14. None did when interviewed by CBS investigative reporters.²⁸

LIEUTENANT REFUSED TO RETURN TO THE FIELD

The New York Times reported that Lt. Col. Herbert told Army investigators that one American officer had refused to go into the field.²⁹ The article did not provide details of the allegation.

This charge apparently referred to an incident that Herbert discussed in Soldier. He said a Negro lieutenant refused to return to the field because his company commander had ordered the death of a detainee. Herbert said the officer explained the details of the case to him.³⁰ In a sworn statement to investigators, Herbert said he then reported the in-

²⁸Congressional Record, 1973, op. cit., S3501.

²⁹New York Times, Mar. 11, 1971, 25:1

³⁰Anthony B. Herbert, Lt., Col., Ret., with James T. Wooten, Soldier (New York, 1973), 223

cident to Col. Franklin and gave Franklin a statement from the lieutenant.³¹

Army investigators determined there were two Negro officers in Herbert's battalion. One of them admitted that he had once "voiced words to the effect that he did not want to go back into the field. . ." but denied any knowledge that his company commander had ordered the execution of a detainee and also denied that he had ever made the statement to Herbert.³² The company commander also denied that he had ordered a detainee killed. Col. Franklin said he did not recall any officer who had refused to go into the field for any reason.³³

WATER-GAG TORTURE

Herbert also apparently suspected that Col. Franklin was aware of field interrogation methods being used by Americans on their Viet Cong prisoners. Herbert told the Chicago Tribune about an incident when a prisoner was being captured in a cane field. Herbert said when he received the report he headed for the area in his helicopter. As Herbert's helicopter approached the field, Herbert asserts he saw Franklin's helicopter leaving. He admits that he could not

³¹Review of Soldier, op. cit., 28

³²Ibid., 29

³³U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 8

know whether Franklin was actually aboard or not.³⁴

When Herbert landed, he said two South Vietnamese were torturing a prisoner "by pouring water into his nose after stuffing his mouth with a rag." He said there was an American sergeant from the brigade military intelligence unit standing by. Herbert said he ordered the torture stopped.³⁵

Again Herbert claims to have reported the incident to Col. Franklin and again he said he was rebuked. Franklin told him that the method by which prisoners were interrogated "was none of my business," Herbert recalled.³⁶

Herbert told James Wooten that "they were . . . getting a wet rag and stuffing it down the guys throat to force him to talk." Herbert also said that Franklin told him it was a legitimate field interrogation technique "and besides, it was none of my business. . . . Colonel Franklin also suggested that if I was so damned morally offended by that, I should think about leaving," Lt. Col. Herbert said.³⁷

In his sworn statement to Army investigators, Herbert told how a U.S. sergeant and an unknown Vietnamese were interrogating the Vietnamese detainee by using the water-gag technique.³⁸

³⁴Chicago Tribune, Mar. 11, 1971, 1:1

³⁵Ibid.

³⁶Ibid.

³⁷New York Times, Mar. 12, 1971, 1:7

³⁸Review of Soldier, op. cit., 37

In describing the incident in Soldier, Herbert said an American military intelligence man was sitting astride the captured Vietnamese. He related that the prisoner had a rag clamped over his face and another American was leaning over him with an open canteen. Herbert says he stopped the torture, took custody of the unconscious prisoner, and returned him to brigade headquarters where he was taken to the military intelligence compound.³⁹

Military interrogation report number 172-186-69, dated Mar. 27, 1969, indicated that a man by the name of Le Day had been captured the day before in a cane field and that there had been field interrogation. A U.S. Army criminal investigator attempted to trace Le Day, but failed.⁴⁰

Several persons, including platoon leader Lt. Larry Le Ray and Herbert's operations officer, Major Ernest Webb confirmed the use of the water-gag technique during interrogations. The two Americans who Herbert told army officials were applying the technique also acknowledged the use of the water-gag technique for field interrogation. Both of these men, however, denied that Herbert had ordered the interrogation stopped as he

³⁹Soldier, op. cit., 299

⁴⁰Review of Soldier, op. cit., 38

claimed. Maj. Webb, however, said Herbert had stopped the interrogation.⁴¹

Again, no one was found that could substantiate Herbert's claim that he reported the incident to Col. Franklin. Herbert claimed at one point during the investigation that the battalion Sergeant Major John Bittorie had overheard his report to Franklin, but Sergeant Bittorie, in a sworn statement, said he had not overheard any such report to Col. Franklin. Franklin also denied that Herbert reported the incident to him.⁴²

ELECTRIC SHOCK TORTURE

Herbert also told Fred Farrar about another incident that had gone unpunished even though he reported it. Herbert claims to have discovered military intelligence men from the brigade torturing a young Viet Cong woman. Herbert said they were using electricity generated by cranking a field telephone to try to get information from her. Herbert said he stopped the torture, reported the incident to Franklin, and again was rebuked. According to Herbert, Franklin told him if he ever interfered again with the military intelligence, he would forbid him from going near them.⁴³

⁴¹Ibid., 37, 38

⁴²Ibid., 37

⁴³Chicago Tribune, Mar. 11, 1971, 1:1

According to James Wooten, Herbert said "when he told Colonel Franklin about it, he was told that he was forbidden to be in the military intelligence area ever again."⁴⁴

Herbert related basically the same story in Soldier: "The girl screamed. I glanced down and saw for the first time that there were wires from her body to a telephone between the Viet's knees. He was cranking it. I grabbed the wires and yanked, damned near lifted the Viet up with them before the wires separated from the phone. It clattered to the floor."⁴⁵

In his official statement to the Army Inspector General at Fort McPherson, Ga., on Nov. 4, 1970, Herbert said the incident happened in March 1969 at the 173d Military Intelligence building at Bow Sow in South Vietnam.⁴⁶

Army investigators determined that during the period in which Herbert claimed the incident happened "Vietnamese detainees were subjected to maltreatment" by American and Vietnamese interrogators of the 173d Military Intelligence Detachment. Techniques employed "included the transmission of electric shock by means of a field telephone, a water-rag treatment which impaired breathing, hitting with sticks and boards, and beating of detainees with fists." Some evidence

⁴⁴New York Times, Mar. 12, 1971, 1:7 (Italics added)

⁴⁵Soldier, op. cit., 358

⁴⁶Review of Soldier, op. cit., 42

was also obtained that indicated Lt. Col. Herbert had witnessed such an interrogation. One man stated that he saw Herbert leave the room following what he believed was the same incident, but at the time Herbert "did not appear to be angry and departed stating he was going to brigade."⁴⁷

Army investigators, although determining that the basic information concerning the treatment of prisoners was true, developed no substantiation that Herbert had either halted such an interrogation or that he had reported the incident to Col. Franklin.⁴⁸

PRISONER BEATEN

On yet another occasion, according to a Chicago Tribune article, one of Herbert's enlisted men reported to him that South Vietnamese soldiers were trying to beat information out of a suspected Viet Cong woman. Herbert said he also reported this to Col. Franklin, only to be informed "it was none of my business when I told him" there were no Americans involved.⁴⁹

In this reported incident, Lt. Col. Herbert was apparently referring to the incident he described in Soldier whereby Master Sergeant Booth told him that he had witnessed

⁴⁷Ibid., 44

⁴⁸Ibid.

⁴⁹Chicago Tribune, Mar. 11, 1971, 1:1

interrogators forcing detainees into a "dead-cockroach" position; questioning them in the "leaning rest" position; and "then when they don't get the answers they want, they just grab them up by their hair and beat hell out of them," the sergeant reported.⁵⁰

Herbert said in Soldier that Lt. Col. John D. Bethea, the Brigade executive officer, received his report on this incident. Bethea then informed Gen. Barnes who directed Lt. Col. Bethea to investigate the action personally. "It's out of your hands," Bethea told Herbert.⁵¹ In his statement on Nov. 5, 1970, Lt. Col. Herbert said he did not know whether or not an investigation had ever actually been conducted.⁵²

MSGT Booth said in his statement to Army investigators on Nov. 23, 1970, that he did not officially inform Lt. Col. Herbert of the incident, but merely mentioned it as one person would to another -- apparently in conversation. Booth also stated that he never saw any report of investigation or complaint initiated by Lt. Col. Herbert.⁵³

After Herbert's report, the incident was investigated by Maj. Joseph E. Arnold, assistant brigade maintenance officer.

⁵⁰Soldier, op. cit., 174

⁵¹Ibid., 175

⁵²Review of Soldier, op. cit., 18

⁵³Ibid., 18, 19

"Lt. Col. Herbert made a statement in the course of this investigation." Arnold reported that the results of the investigation were inconclusive. Maj. Arnold said he passed this information on to Lt. Col. Herbert who accepted it without comment. The investigation determined that some maltreatment had occurred. Since the identities of offenders could not be determined, however, the investigation proved useless.⁵⁴

PLATOON LEADER KILLED BY HIS OWN MEN

A New York Times article reported that Herbert told Army CID men that while he was serving as brigade inspector general one American platoon leader had been killed by his own men who then listed him as having been killed by hostile fire. The article did not claim that Herbert reported the incident to Col. Franklin or to Gen. Barnes.⁵⁵

According to Herbert's account of the incident in Soldier, when he visited Landing Zone (LZ) English, and was unable to be "ass in the grass" with the troops, he spent his time in the brigade tactical operations center (TOC). During one of those visits, he heard over the radio that a platoon leader had been killed in action. The next morning he discovered it had been a young lieutenant out on his first patrol.

⁵⁴Ibid., 19

⁵⁵New York Times, Mar. 11, 1971, 25:1

"According to the report, he had set up an ambush and then left its perimeter to establish security, which was completely ass-backwards, but nevertheless the way he had been trained by the U.S. Army. . . . When his men heard movement to their rear, the report related, they called him on the radio. . . . He gave the order to 'cream 'em' and they did. He was dropped in his tracks."⁵⁶

It was not until some months later, while commanding officer of the 2nd Battalion, that Herbert was told by Sergeant First Class Lucien T. Brewer that the lieutenant had not been killed accidentally by his own men at all, but was deliberately killed by two of his own men who had been discovered smoking marijuna by the lieutenant just before leaving on the patrol. The lieutenant had "threatened to turn them in the next day." Herbert said he "was skeptical of his [Brewer's] account but he [Brewer] insisted it was true." Brewer said, "they shot him down in cold blood. Hell, he wasn't out in front of the ambush like they said. He was in back of it up on the high ground and the bullet that killed him went up through him. Hell, sir, he was still alive even then, but they finished him off before the dust-off [medical evacuation helicopter] came in." SFC Brewer said when the patrol returned, "we reported it to the captain but nothing came of it because he

⁵⁶Soldier, op. cit., 140-142

walked into the helicopter blades and we decided not to ever mention it again."⁵⁷

Army investigation of Herbert's charge determined that at about 12:40 a.m., Sep. 9, 1968, that unidentified members of First Lieutenant Robert Elliott's ambush patrol did accidentally shoot and kill him after "elements of his patrol were mistaken for a hostile force."⁵⁸

Herbert told investigators in two sworn statements that he was told by SFC Brewer in March 1969 that Brewer had been on the patrol when Elliott had been shot by "one of two men in the patrol whom Elliott had caught smoking marijuna." When investigators talked to SFC Brewer, however, he stated that he had not been a member of the patrol when Elliott was killed and specifically denied having told Herbert that Elliott was murdered.⁵⁹

The investigation also revealed that all members of the ambush patrol stated that death was accidental. The casualty report did not indicate any foul play. Army investigators concluded that the lieutenant's death had been accidental.⁶⁰

⁵⁷Ibid,, 385, 386

⁵⁸Review of Soldier, op. cit., 9

⁵⁹Ibid.

⁶⁰U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 4

Herbert said he reported the incident to Franklin the same night that SFC Brewer related the story to him. "Again, as had happened time and time before, Franklin accused me of lying and bringing charges that assassinated the character of a good officer." Herbert claimed Col. Franklin agreed "to take care of this," and then instructed him to not talk about the matter until it was over.⁶¹

Col. Franklin told Army investigators that the lieutenant's death had been investigated at the time, with no indication of foul play. He also stated that he had "heard about an officer's being accidentally killed by his own men," but said no specific allegations of murder with an supporting evidence had been presented to him. If it had, he said, the charges would have been investigated.⁶²

BAMBOO BEATINGS

Herbert also told New York Times that he watched South Vietnamese military personnel flail women prisoners with bamboo rods that had been frayed on the end. "There was no way I could stop that since it was going on inside the wire compound," he said. "The bamboo really mutilated the flesh, and they were using it on the woman's faces and hands." When Herbert reported the incident to Col. Franklin, Herbert said he was

⁶¹Soldier, op. cit., 387

⁶²U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 4

simply advised "to stay away from the compound if his sense of decency was offended."⁶³

In the allegations Herbert made to the Army on Nov. 4, 1970, he said in a statement:

I observed several conex containers⁶⁴ facing the building that were lighted inside and had a guard on the door. In two of these, Vietnamese females were seated at a table, one in each and one was crying. In one of these I saw a Vietnamese interrogator strike a female with a bamboo stick across the back of her hands. In the other the interrogator struck the cheek of the girl's face with a stick and struck her in a breast with his hand.⁶⁵

In Soldier, Herbert said:

They were lovely girls who were giving the wrong answers. The first wrong answer brought the flail on the hand. The next one brought the flail smack across the face. Then across the breast, taking off skin, nipples -- and the screams were hideous. But the girls remained silent.

I reported it. Nothing ever happened.⁶⁶

Army investigators determined that this technique had been used on prisoners, but were not able to substantiate the

⁶³New York Times, Mar. 12, 1971, 1:7

⁶⁴Metal container approximately 6 feet high, 8 feet wide and 10 feet deep that is used for shipping material to Vietnam by sea. The containers have metal swinging doors on one side for loading and unloading the container.

⁶⁵Review of Soldier, op. cit., 47

⁶⁶Soldier, op. cit., 396

specific allegations defined by Herbert.⁶⁷ The investigators also failed to find any witnesses who could verify that Herbert had reported the incident to Col. Franklin as he had claimed. "No evidence was found to substantiate the claim," the Army said.⁶⁸

SUMMARY

The newspapers reviewed for this study reported seven specific atrocities which Lt. Col. Herbert said he had either seen or had knowledge of. Of the seven, Herbert said he witnessed four. The other three were based on hearsay. In almost every case, he said he reported the incidents to Col. Franklin who took no action.

Only the New York Times, the Chicago Tribune and the St. Louis Post-Dispatch actually discussed specific atrocities and the only report carried by the Post-Dispatch was contained in a New York Times News Service story. The other three newspapers discussed Herbert's charges against Gen. Barnes and Col. Franklin only in general terms.

Of the seven specific atrocities discussed, some were substantiated by Army investigators and some were not.

The New York Times, Chicago Tribune and the St. Louis

⁶⁷Review of Soldier, op. cit., 47

⁶⁸U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 3

Post-Dispatch reported Herbert's claim that detainees were killed at the St. Valentine's Day massacre, that a female detainee had been dramatically murdered, and that the incident had been reported to Col. Franklin by Lt. Col. Herbert. Only the fact that detainees had been killed was substantiated.

The New York Times reported the allegation that a lieutenant had refused to return to the field. This claim was unsubstantiated.

The New York Times, Chicago Tribune and the St. Louis Post-Dispatch reported Herbert's claim that water-gag torture had been used during field interrogation, that Herbert had stopped the torture and then reported the incident to Col. Franklin. Army investigators determined that the water-gag technique had been used, developed some evidence that Herbert may have stopped such an incident, but failed to substantiate Herbert's claim that he had reported the incident to Col. Franklin.

The same three newspapers also reported the electric shock torture allegation. Again Army investigators determined that such maltreatment was used. Evidence that Herbert had actually witnessed and stopped such an interrogation was inconclusive and his claim that he reported such an incident to Col. Franklin was unsubstantiated.

The Chicago Tribune and the New York Times also reported that Lt. Col. Herbert had been told that a Viet Cong woman was

being beaten during interrogation. The Tribune added Herbert's claim that he reported the incident to Col. Franklin. The investigation failed to provide conclusive evidence that such a beating did take place and no evidence was developed to indicate the incident had been reported to Col. Franklin.

Only the New York Times reported the allegation that a platoon leader had been killed by his own men who then reported that he had been killed by hostile fire. This charge was unsubstantiated by Army investigation.

The New York Times, and also in their News Service report as carried in the St. Louis Post-Dispatch, reported Herbert's story that female prisoners were beaten by bamboo flails. The fact that such treatment did happen was substantiated by investigators, but the specific case described by Lt. Col. Herbert was not. Also Herbert's claim that he reported the incident to Col. Franklin was unsubstantiated.

The information on which the newspapers based their reports came almost exclusively from Lt. Col. Herbert. Since the charges were still under active investigation, the Army, for the most part, declined to comment on the charges to protect the rights of the individuals concerned. One statement was made by the Army which was reported by the Chicago Tribune, March 11, the Washington Post and the Los Angeles Times, March 12, and the Atlanta Constitution, March 13.

At the same time, Gen. Barnes said, in answer to query,

that the charges were, for the most part, unfounded, but refused to discuss the charges further for the same reason given by the Army spokesman. Col. Franklin refused to discuss the charges at all, again because of the active investigation. The responses of these two officers were reported by the New York Times, March 13 and 16, the Washington Post, March 16 (Franklin only), and the Atlanta Constitution, March 14.

In most cases, the newspapers published Herbert's claims for just what they were -- Herbert's claims. The newspapers and writers were careful to attribute the information to Herbert and to not publish unsubstantiated information as fact.

CHAPTER III

CHARGES FIZZLE

After the initial surge of interest in Herbert's allegations, little further press interest was shown for nearly six months. Between March and September 1971, only five additional stories about the Herbert case were published in the newspapers studied, and only two of those were carried by more than one newspaper. There was renewed interest in the case, however, during September and October, 1971, but even then, few stories discussed the claimed atrocities. The accuser became more the center of press interest than his accusations.

Fred Farrar, who remained on top of the story he broke in the Chicago Tribune some six weeks before, reported on April 22 that the Army had "flagged" the records of five persons as a result of the Herbert investigation. He explained that this was an administrative action to insure no favorable personnel action could be taken toward any of the men. Although the Army refused to identify the five, Farrar said Gen. Barnes, Col. Franklin and Lt. Col. Herbert were among the five.¹

¹Chicago Tribune, Apr. 22, 1971, 2A:1:1

In a related story, an AP report in the St. Louis Post-Dispatch said Col. J. Ross Franklin, who had been accused by Lt. Col. Herbert of covering up alleged atrocities in Vietnam, had been awarded the Saigon government's highest award for gallantry in action, the Cross of Gallantry with Palm. The article also said an Army CID investigation team from Washington had been in Vietnam investigating the charges against Col. Franklin, but Army officials said it had returned to the United States.²

In another related incident, Richard Halloran reported in the New York Times that John W. Barnes had been promoted from brigadier general to major general on March 1, nearly five months after the Army began investigating allegations made against him in September 1970 by Lt. Col Herbert. Normally, Halloran said, the files of officers involved are "flagged" until the inquiry is completed and the case dismissed or settled by court martial.³

An Army spokesman contended that Gen. Barnes did not become the subject of investigation until March 1971 when Lt. Col. Herbert filed formal charges against him. Thus, the promotion did not come five months after allegations had been

²St. Louis Post-Dispatch, May 2, 1971, 32A:3

³New York Times, June 6, 1971, 4:1. The Chicago Tribune reported that Gen. Barnes' record was flagged on Apr. 22, 1971, some seven weeks after his promotion.

made in September 1970, but some two weeks before formal charges were filed on March 15, 1971.⁴

HARASSMENT CHARGED

The first public charges of Army harassment was brought by Lt. Col. Herbert in June 1971. Both the New York Times and the Los Angeles Times carried basically the same AP report in which Lt. Col. Herbert said an Army investigator had threatened him in an unsuccessful attempt to stop charges from being filed against Gen. Barnes and Col. Franklin. Herbert said the threat came from Maj. Carl E. Hensley, who had headed the Army team investigating Herbert's war crimes allegations. Herbert said Maj. Hensley erroneously believed that Herbert had been commander of the battalion responsible for an alleged killings of 24 Vietnamese civilians in a "shooting spree" at Bong Son, Republic of Vietnam, in September 1968. According to Herbert, Hensley told him, after first consulting with an unnamed superior, "If you go down and file charges then we're going to file charges against you for assault against six individuals" at Bong Son. Herbert said the Bong Son incident was common gossip in the Army, but that he had heard only second hand accounts.⁵

⁴New York Times, June 6, 1971, 4:1

⁵Los Angeles Times, June 3, 1971, 18:3

When Herbert filed his charges despite the threat, he said Maj. Hensley called to thank him for keeping his name out of it. Hensley also told Herbert that he would recommend to the Army that they prosecute the case against Barnes and Franklin. If the Army would not listen to him, Hensley reportedly told Herbert, "Then I'll be back in touch with you." Hensley committed suicide in his Clinton, Md., home on April 18, 1971, without again talking to Herbert.⁶ James T. Wooten, in a New York Times Magazine article, said that Herbert claimed Hensley had been "extremely despondent" about the case just before the suicide and had told Herbert he was under heavy pressure.⁷

Col. Henry H. Tufts, chief of the Army Criminal Investigative Division, however, said the circumstances surrounding the death of Maj. Hensley had been "fully explored" and "absolutely no connection" could be found between the investigation of Herbert's allegations and Hensley's death.⁸

Lt. Col. Herbert also told the press that he had been penalized by the Army for his insistence during the past 18 months that the atrocities he reported be investigated. He said he had:

⁶Ibid.

⁷New York Times Magazine, Sep. 5, 1971, 34

⁸Ibid.

- Been relieved of his command in Vietnam shortly after being named the outstanding battalion commander in his region and winning seven combat awards;

- Been taken out of the prestigious Command and General Staff College at Fort Leavenworth, Kansas, "An assignment to which indicates that an officer is considered to have potential for senior responsibility;" and

- Been threatened twice with having charges filed against him unless he dropped his allegations against Barnes and Franklin.⁹

Maj. Gen. Winant Sidle, the Army's chief of information, disputes Herbert's claim that he was named outstanding battalion commander in the 173d Airborne Brigade. He said there was simply no such award.¹⁰

Maj. Gen. Barnes also disputes the claim:

I . . . relieved him [Herbert] because he was a lousy battalion commander -- the worst of more than 20 who have served directly under me, and the only one I ever had to relieve. He was an outstanding platoon leader or company commander, but I had plenty of them. I regret that it took me as long as 58 days to find out how inadequate a battalion commander he really was.¹¹

⁹New York Times, June 6, 1971, 4:1

¹⁰Letter, dated July 18, 1972, from Maj. Gen. Winant Sidle, U.S. Army chief of information, to Editor, Playboy Magazine, 4

¹¹Letter, dated June 29, 1972, from Maj. Gen. John Barnes, USA, to Editor, Playboy Magazine, 2

Less than a month before his relief as Commanding Officer of the 2d Battalion (Airborne), 503d Infantry, however, Herbert did receive some complimentary comments about his abilities, even though they were contained in letters of censure. Gen. Barnes said in a "Letter of Reprimand" that Herbert's battalion had "performed its tactical mission in a superior manner."¹² Some three weeks later, and only two days before Herbert was relieved of his command, Col. Franklin said in a "Letter of Counsel" that as a battalion commander, Herbert displayed outstanding tactical skill and aggressiveness. "Operationally," Col. Franklin said, "you are probably the best Battalion Commander in the Brigade."¹³

The Washington Post also reported from Fort McPherson, Ga., that Herbert had suffered "continuous harassment" by the Army since he brought charges against Gen. Barnes and Col. Franklin. Herbert said he had asked the American Civil Liberties Union (ACLU) to help him stop the harassment.¹⁴

¹²Official Letter of Reprimand, dated Mar. 14, 1969, from Brig. Gen. John W. Barnes, USA, Commander 173d Airborne Brigade, to Lt. Col. Anthony B. Herbert, Commanding Officer, 2d Battalion (Airborne), 503d Infantry, 173d Airborne Brigade.

¹³Official Letter of Counsel, dated Apr. 2, 1969, from Col. Joseph R. Franklin, USA, Deputy Commander, 173d Airborne Brigade, to Lt. Col. Anthony Herbert, Commanding Officer, 2d Battalion (Airborne), 503d Infantry, 173d Airborne Brigade. Both a Letter of Reprimand and a Letter of Counsel are administrative types of punishment. The Letter of Reprimand is the more severe.

¹⁴Washington Post, Aug. 1, 1971, A7:1. This was the first report that indicated the ACLU had become involved in the Herbert case.

In September, apparently as a direct result of his public statements about the charges he had filed against Barnes and Franklin and also his claims of Army harassment, Herbert was removed from his job as Third Army reenlistment officer at Fort McPherson and reassigned as Assistant Industrial Operations Officer. All newspapers studied, except the Los Angeles Times, carried the report.

A Washinton Post article by Phil Gailey from Atlanta was the most detailed. He pointed out that Herbert was removed as reenlistment officer despite an award to the Third Army for having achieved the highest reenlistment rate in the continental Army. Gailey also explained that during the awards ceremony Herbert was relegated to the back row and not even allowed to participate in the program. According to Herbert, the reenlistment officer normally accepts the award for the command. When asked about Herbert's transfer, an Army spokesman said Herbert's views were "not compatible with the job of persuading young men to stay in the Army. His new job is more in keeping with his attitude."¹⁵

Herbert called the reassignment "humorous" and called it the latest example of Army harassment. He also said the unions should "raise hell" about him filling the new job be-

¹⁵Washington Post, Sep. 3, 1971, A8:3. The Army comment was also reported in the Atlanta Constitution, the New York Times and the St. Louis Post-Dispatch.

cause it is "normally . . . filled by a civilian."¹⁶

Herbert rationalized that his new job would be short lived anyway since he had already been told he must retire from the Army in February 1972. He said the Army told him the decision was based on "education, decorations and assignment." To that, Herbert rebutted:

I have a master's degree in science and will finish my work for a PhD in psychology next year. I've been to 23 military schools and have 41 combat decorations. As far as assignments, I've held practically every assignment in the Army from enlisted man to where I am now. If they have that many people who are more qualified than I, well, I feel like the country's in good hands.¹⁷

Fred Farrar in the Chicago Tribune reported another case of claimed harassment. Herbert said other Army personnel were opening his mail before he received it and also listening in on his phone calls.¹⁸

Col. L. B. Mattingly, Third Army Information Officer at Fort McPherson, acknowledged that Herbert had made such a complaint to the Inspector General. But, Col. Mattingly said, he "has failed to provide the voluminous 'evidence' he says he has. One flimsy, torn envelope, bearing the postal notation that it had arrived in poor condition, was provided, but nothing more" As far as the charge that others had

¹⁶Ibid.

¹⁷Ibid.

¹⁸Chicago Tribune, Oct. 9, 1971, 1:1

been listening to his telephone calls, Col. Mattingly explained that several people share a single telephone number at Fort McPherson with several extensions. "It is possible . . . that while Herbert was talking to . . . people, someone in the office may have indeed picked up their handset for a few moments to see if the line was clear." There is no other way to find out, the Colonel said. He also stated that the seriousness of the matter was understood, and added that in any case, the post commander did not have the authority to direct any such action anyway.¹⁹

FRANKLIN CHARGES DROPPED

All newspapers studied except the Atlanta Constitution reported on July 22, 1971 that charges against Col. Franklin had been dismissed. Fred Farrar had a by-lined piece in the Chicago Tribune, the St. Louis Post-Dispatch ran an account from wire services and the Washington Post and the New York Times used an AP report.

According to the Tribune account, the Army refused to say why the charges against Col. Franklin were dropped. Lt. Col. Herbert, however, said that preliminary investigation had shown that the charges were not substantiated. Herbert said he was not surprised that the charges had been dropped

¹⁹Letter, dated Nov. 17, 1971, from Col. L. B. Mattingly, USA, Information Officer, Third Army, to Mr. Dick Cavett, American Broadcasting Company, New York.

and said he doubted the thoroughness of the inquiry. "I was the guy who made the charges," he said, "but nobody came to see me."²⁰

The St. Louis Post-Dispatch report was basically the same, but erroneously reported that Herbert had been Inspector General of the 173d Brigade when the alleged atrocities occurred.²¹ Lt. Col. Herbert was actually Commanding Officer of the 2d Battalion (Airborne), 503d Infantry, when most alleged atrocities occurred.

The AP report in the Washington Post, the Los Angeles Times and the New York Times reported that the charges against Franklin had been dismissed by Maj. Gen. John H. Cushman, Commander of the Delta Regional Assistance Command in Vietnam. It also said the Army was continuing its investigation into Herbert's charges against Gen. Barnes.

The New York Times added that the Army said Lt. Col. Herbert had also been accused of personal misconduct, but declined to say who made the allegations. The spokesman did say the allegations did not involve atrocities.²²

²⁰Chicago Tribune, July 22, 1971, 3:14:3. In addition to his sworn statement to the Inspector General at Third Army Headquarters at Fort McPherson, Herbert was also interviewed at length by CID personnel in Washington, D.C., November 2-6, 1970.

²¹St. Louis Post-Dispatch, July 22, 1971, 4E:1

²²New York Times, July 22, 1971, 13:1

CREATING AN IMAGE

On September 5, 1971, a lengthy feature article about Herbert by James T. Wooten of the New York Times was published in three of the six newspapers studied. The New York Times Magazine ran the text of the article, the St. Louis Post-Dispatch's Everyday Magazine ran nearly the entire text, while the Chicago Tribune published a more tightly-edited version.

The Wooten article appeared to be based almost exclusively on lengthy interviews with Lt. Col. Herbert. It expounded the virtues of the "supersoldier." Wooten said, after discussing the medals that Herbert, the most decorated enlisted soldier, had won in Korea, that "what was even better was that all the hell and snow and mud and blood hadn't changed him much from the good-natured, slow-talking, gentle-handed, church-going boy his mother had raised."²³

Herbert was described as a Ranger, "that tough epitome of military ruggedness" as well as a Green Beret. In Vietnam, Wooten said, Herbert was a battalion commander "in one of the Army's toughest outfits." An unnamed "younger officer" claimed Herbert was "absolutely incredible" and called him the "perfect warrior -- a supersoldier." He said Herbert was

²³New York Times Magazine, Sep. 5, 1971, 10. The Chicago Tribune edited out that portion of the article.

"brilliant yet simple, tough but gentle and . . . absolutely fearless."²⁴ An unnamed general, according to Wooten, called Herbert "one of the best, if not the best combat commander in the whole goddamned Army." Those who know about such things, Wooten told his readers, believed Herbert would in a few years be wearing a star. Wooten described Herbert as "a caricature of the Army man, an eerie reflection of some Pentagon promoter's creative-billboard thoughts." Yet on April 4, 1969, Wooten said, Herbert was "abruptly" relieved of his command and the general who relieved him recommended to the Pentagon that Herbert should never command again.²⁵

After discussing Lt. Col. Herbert in glowing terms, Wooten then turned his attention to Gen. Barnes and Col. Franklin. Franklin was described as "a comer" like Herbert, but unlike Herbert, was a West Point graduate "with general written all over him." Gen. Barnes was described as "an old Vietnam hand" who had held several previous jobs in Vietnam, and a very close friend of President Nguyen Van Thieu. Wooten said Gen. Barnes was aware of Herbert's image as a tough shrewd combat commander, but that the relationship between Barnes and Herbert was not as personal as that between Franklin and Barnes.²⁶

²⁴The Chicago Tribune edited out this sentence.

²⁵New York Times Magazine, Sep. 5, 1971, 11

²⁶Ibid.

The Wooten article resulted in at least nine pro-Herbert letters to the Chicago Tribune and the New York Times. No anti-Herbert letters were found in any of the newspapers studied.

One New York Times reader called Herbert's ordeal "simply terrifying" and "horrifying" and said the article by Wooten suggested that atrocities are actually sanctioned by U.S. commanders. The writer said "the Commander in Chief should intervene . . . to insure that a truly impartial determination of the facts is made and that justice will be served."²⁷ Another reader was "outraged at the gross injustice" being done to Herbert . . ." while another called it "a sad commentary on the present affairs of the Army." Another New Yorker commented that "Hopefully, Mr. Wooten's fine article will help exonerate a man who evidently believed that, even in battle, certain principles hold true. We still need the 'reluctant' soldier, I'm afraid."²⁸

A Chicago Tribune reader said it was a "traumatic experience . . . to know that this great officer is to be sold down the river by the Army 'brass'." Another said "it is a disgrace to the Army to put a man like Anthony Herbert in

²⁷New York Times, Sep. 20, 1971, 24:5

²⁸New York Times Magazine, Sep. 26, 1971, 97,98

charge of 'incinerators, trash cans and telephones' and to ignore the behaviour of his unscrupulous superiors in Vietnam."²⁹

In effectively developing an image of the "super-soldier," Mr. Wooten provided his readers some false or misleading information. He pointed out, for example, that Herbert had been a member of the Green Berets. What he did not tell his readers, however, was that Herbert was kicked out of the Green Berets and received a bad efficiency report from his superiors. That efficiency report, too, was apparently later removed from his official files.

Col. J. B. Bartholomees(sic), Herbert's Group Commander at Fort Bragg, N.C., at the time, explained that Herbert served under him from December 1963 to July 1964. "I terminated him from service with the elite Green Berets because he assaulted a fellow officer and consistently demonstrated his inability to get along with his fellow officers or with non-commissioned officers," Col. Bartholomees said. The colonel said he could not depend on Herbert's word, and added that an efficiency report was submitted on Herbert that would have caused him to show cause why he should be retained in the Army. "I understand he took action (unknown to me) to have the

²⁹Chicago Tribune, Sep. 11, 1971, 1:8:4

damaging report removed from his official file," the colonel concluded.³⁰

Lt. Col. Melton Kunze, who actually prepared the efficiency report following the incident at Fort Bragg, said he thought Herbert "lacked complete self control" and that he had "recommended he not be assigned as an advisor to any foreign nations. I felt he had little understanding of other people's points of view and he was unusually difficult to work with," Kunze said. Maj. Melvin Bowdan (sic), the officer who was allegedly assaulted by Herbert, said that following an argument between them, Herbert had attacked him from behind and was beating him on the head and shoulders when another officer rescued him.³¹

Herbert recalled the incident in somewhat different terms. He first of all describing the commander of the group, Col. "Blinky" Bartholomews (sic), as a Methuselah colonel and then explained that the problem developed when, as officer in charge of a night jump exercise, he (Herbert) cancelled the jump after determining that the winds were too strong for troop safety. At that point an argument developed between he and

³⁰Letter, dated Nov. 24, 1971, from Col. J. B. Bartholomees, USA, to Time magazine. This same episode was also discussed in a letter from Maj. Gen. Sidle to Playboy magazine, op. cit.

³¹George Crile article in the Star-News, Pasadena, Calif., Nov. 28, 1971

the safety officer, Captain Bowden (sic) over who had ultimate authority to cancel the exercise. Captain Bowden contended the winds were within safety limits and the exercise should not have been cancelled. During the dispute, Herbert said Bowden swung at him. Herbert said he thought it was a joke, "stepped back, grabbed his arm and cross-hawked him to the ground." Herbert said he pinned Bowden and grabbed his throat. It was at this point, Herbert recalled, that a Maj. Beatty grabbed his throat. Herbert said he put his elbow to Maj. Beatty's temple and the fight was all over. As a result of the fight, Herbert said he was given non-judicial punishment without his consent and fined \$25. Sometime later, Herbert said, a National Guard officer with "no ax to grind" told Herbert's commanding general what really happened that night and the matter was stricken from Herbert's record.³²

Wooten also reported that Lt. Col. Herbert had been "abruptly" relieved as Commanding Officer. The Army, however, contended that Herbert was not abruptly relieved, but relieved "after repeated counseling by General Barnes and Colonel Franklin."³³ Franklin said he had counseled Herbert several

³²Anthony B. Herbert, Lt. Col., Ret. with James T. Wooten, Soldier (New York, 1973), 92, 95, 96

³³U.S. Army Fact Sheet, Office of Information, Department of the Army (Washington, Nov. 5, 1971), 1

times, once on telling the truth "or being more exact in what he said."³⁴

Herbert also received written warnings that his superiors were not pleased with his performance and was told specifically that his relief from command was being considered if he did not shape up. On Mar. 14, 1969, Brig. Gen. Barnes issued Lt. Col. Herbert an "Official Reprimand" which said Herbert had "created unnecessary and unjustified friction between himself and several principal brigade staff officers and had, in effect, pitted himself against the brigade." General Barnes warned, that if Herbert continued, his actions would "be cause for your immediate relief."³⁵ Also on that same day, Gen. Barnes, in a separate letter to Herbert, said he would "not tolerate" Herbert "undermining his efforts to achieve "my high standards." Gen. Barnes said he expected Herbert's battalion to give "unrestrained support to brigade policies and programs."³⁶

Finally on Apr. 2, 1969, just two days before his actual

³⁴Barry Lando, "The Herbert Affair," The Atlantic Monthly, May 1973, 75.

³⁵Official Letter of Reprimand, op. cit.

³⁶Letter, dated Mar. 14, 1969, from Brig. Gen. John Barnes, Commander, 173d Airborne Brigade to Commanding Officer, 2d Battalion (Airborne), 503d Infantry, 173d Airborne Brigade.

relief from command, Lt. Col. Herbert was issued a "Letter of Counsel" by Col. Franklin which said Herbert's "habitual tendency to exaggerate and misrepresent even inconsequential matters" had reached the point "that in all frankness, I would make no major decision on recommendation based solely on information which you have given me." Franklin reminded Herbert that "continued action of this type can only result in your relief from command with all the obvious attendant consequences."³⁷

Wooten lastly claimed that Herbert was the most highly decorated soldier in the Korean War, which Army records do not substantiate.³⁸

DAMAGING EFFICIENCY REPORT

Wooten also discussed in his September 5 feature the contents of Herbert's adverse efficiency report prepared by Col. Franklin and signed by Gen. Barnes, which Wooten called "devastating." The report, according to Wooten, said Herbert had no ambition, presented a terrible appearance, was undependable, did not cooperate, had no integrity, moral courage, loyalty or will for self-improvement. It also said Herbert had a "tendency to exaggerate and had on occasions

³⁷Official Letter of Counsel, op. cit.

³⁸See Chapter II, footnote, no. 12

deliberately lied." It also said Herbert had pitted himself against the brigade commander and his staff. Wooten said that Herbert's relief by Gen. Barnes was based on the opinions expressed in the report.³⁹

The Los Angeles Times, the Washington Post, the Chicago Tribune and the New York Times carried an AP report on October 4 which said Secretary of the Army, Robert F. Froehlke, had agreed to review Herbert's record to determine if the damaging efficiency report should be removed.

The AP report in the Washington Post carried Robert A. Dobkins' by-line. AP said Secretary Froehlke was conducting the review because he had been "prodded by Congress." Congressional sources said that Representative F. Edward Hebert (D-La.), chairman of the House Armed Services Committee, had learned about documents filed a year before by Col. Fred E. Hansard, Third Army Adjutant General at Fort McPherson, which recommended that the damaging efficiency report "be expunged" from Herbert's record. His recommendation had never been acted upon. Hansard said in a telephone interview with AP that the recommendation was "a staff-coordinated position" and had been sent to Washington on Sep. 9, 1970. "I suppose it's been delayed," he said.⁴⁰

³⁹New York Times Magazine, Sep. 5, 1971, 33

⁴⁰Washington Post, Oct. 4, 1971, A2:6

The action by Mr. Froehlke was apparently prompted by a Sep. 20, 1971 letter from Representative Hebert which urged Froehlke to review Herbert's case. Hebert reportedly took the action because he believed something needed to be done "because Herbert's last avenue of appeal had been exhausted." Also, Army officials were apparently unaware of the adjutant general's report. An Army spokesman acknowledged that Froehlke had entered the case and said an announcement would be made when the review had been completed.⁴¹

Five days later, all six newspapers reported that Secretary Froehlke had ordered the damaging efficiency report removed from Herbert's record. Most extensive of the reports was contained in a Washington Post article by Michael Getler and Peter Braestrup. The Los Angeles Times and the St. Louis Post-Dispatch used an AP story, the Atlanta Constitution a UPI story, while the Chicago Tribune and the New York Times used staff written stories.

The Washington Post said the report was "the only negative one ever filed against the 23-year veteran." Froehlke said he had considered Herbert's poor efficiency report within "the broader framework of Lt. Col. Herbert's many years of service." Froehlke reasoned that since the report covered only

⁴¹Ibid.

58 days of service it "might have reflected an unfortunate exception to a record of otherwise effective service."⁴²

Froehlke said he had considered Herbert's earlier appeal for redress, conducted in 1969 by Maj. Gen. Joseph R. Russ, and a recommendation made in 1970 by Headquarters Third Army. Froehlke also admitted that he had originally intended to delay his announcement until completion of the Barnes inquiry, but because Herbert's efficiency report and the Barnes investigation were "unrelated" he had made the announcement immediately. Froehlke said his review did not indicate that Herbert's removal from command "was in any way connected with reporting or non-reporting of war crimes, atrocities or similar misconduct."⁴³

Herbert said he was happy about the decision, and added that he had believed all along that he would be vindicated once his case came to the attention of the "higher ups." He also said that the action had not changed his mind "one iota" about the charges he had brought against Barnes and Franklin.⁴⁴

The New York Times said that Maj. Gen. Barnes' decision to relieve Herbert of command and recommend that he not again be allowed to command was based on the efficiency report filed

⁴²Washington Post, Oct. 9, 1971, 1:4

⁴³Ibid.

⁴⁴Ibid.

by Col. J. Ross Franklin. The Times further reported Herbert's claim that Gen. Barnes and Col. Franklin had "each ignored eight criminal charges of murder, torture and other mistreatment of prisoners of war by U.S. troops."⁴⁵

Fred Farrar, in a Chicago Tribune story, also reported that Herbert's efficiency report had led to his release as a battalion commander. Farrar said that Froehlke's review showed that Herbert "was relieved -- despite his tactical and technical skills, and his personal bravery -- because both his immediate supervisor and his brigade commander stated that they had lost confidence in his judgment and could no longer tolerate what they considered his inability to work in harmony with his colleagues."⁴⁶

The Los Angeles Times pointed out that the removal of the bad efficiency report opened the possibility that Herbert could continue his career. The Times said Herbert's record, less the adverse efficiency report, would be forwarded to a board where Herbert would again be considered for promotion to regular Army major. The Army admitted in its statement, according to the Times, that Herbert's efficiency report "contains some unwarranted expressions of opinion." Herbert

⁴⁵New York Times, Oct. 9, 1971, 1:1

⁴⁶Chicago Tribune, Oct. 9, 1971, 1:1

told reporters that he never wanted to leave the Army but would have to think over some things now and also discuss them with his family.⁴⁷

An AP story in the St. Louis Post-Dispatch and a UPI story in the Atlanta Constitution briefly reported the story accurately, but both, in providing background, reported without attribution, that Herbert had reported war crimes to Barnes and to Franklin. UPI said, "as a battalion commander . . . Herbert reported to . . . Brig. Gen. John Barnes and Col. J. Ross Franklin, alleged incidents of murder and torture of Vietnamese civilians." AP said that Herbert's "troubles began in 1969 when . . . he told his superior officers that he saw incidents of murder and torture of Vietnamese civilians."⁴⁸

The New York Times report from Washington simply confused the facts. The report said that not long after Herbert made public his plans to file official charges against Barnes and Franklin, they added the efficiency report to his record.⁴⁹

There were several examples of careless reporting regarding Herbert's efficiency report. In his feature article

⁴⁷Los Angeles Times, Oct. 9, 1971, 11:1

⁴⁸Atlanta Constitution, Oct. 9, 1971, 3A:1, and St. Louis Post-Dispatch, Oct. 9, 1971, 2A:1

⁴⁹New York Times, Oct. 16, 1971, 14:4

published in three of the newspapers studied, Wooten stated that Herbert's efficiency report indicated that Herbert had no ambition and presented a terrible appearance. In reality, Herbert received the maximum grade in both categories on the efficiency report by both Gen. Barnes and Col. Franklin. He was also marked in the middle in both dependability and loyalty. Wooten's claim of "undependable" and "no . . . loyalty" would indicate a lower rating. Herbert received the lowest possible marks in cooperation, integrity, moral courage and self-improvement [only Franklin marked self-improvement. Gen. Barnes marked that category not observed.] as correctly indicated by Wooten.⁵⁰

The Washington Post on October 9 remarked that the bad efficiency report ordered removed from Herbert's official file by Secretary Froehlke was the only negative one ever filed against Herbert. This ignored the efficiency report filed, but apparently later removed, following the Green Beret episode which Col. Bartholomees claims would have required Herbert to show cause why he should be retained in the Army.

Both the New York Times and the Chicago Tribune became confused over the timing of Herbert's efficiency report. On October 9 both papers reported that the decision to relieve Herbert was based on the efficiency report prepared by Franklin.

⁵⁰Efficiency report of Lt. Col. Anthony B. Herbert for period Dec. 13, 1968 to Apr. 4, 1969.

Actually the efficiency report was prepared based on Herbert's performance. It came subsequent to and as a result of his relief from command.

The New York Times said on October 16 that the efficiency report was added to Herbert's record not long after Herbert made his plans public to level charges against Barnes and Franklin. This, of course, would erroneously indicate that the efficiency report, actually filed in April 1969, was a vindictive move by Barnes and Franklin and came as a result of Herbert's action in filing charges against them for covering up war crimes. That is not true.

New York Times also reported on October 9 that Gen. Barnes and Col. Franklin "each" ignored eight criminal charges. In reality, Herbert charged Gen. Barnes with failing to report and investigate three war crimes while Col. Franklin was charged by Herbert with failing to report and investigate seven incidents.⁵¹

Lastly, both UPI and AP said without attribution that Herbert had reported war crimes to Barnes and Franklin (AP said "his superior officers"). By this time, the charges against Col. Franklin had already been dropped and those against Gen. Barnes remained as only Herbert's allegations.

⁵¹U.S. Army Fact Sheet, Office of Information, Department of the Army (Washington, Dec. 7, 1971), 8

ATROCITIES REPORTED

After Herbert returned to the United States in 1969, "Vietnam gnawed at his stomach, day and night," James T. Wooten wrote. Herbert felt he had gotten the short end of the stick. Herbert said his orders to the command general staff school had been cancelled and he had ended up at Fort McPherson, Ga., while Gen. Barnes had been promoted to major general and Col. Franklin had been hand picked for the Peers Commission.⁵²

Herbert said he began to discuss his experiences in Vietnam with some lawyers who kept recommending that he make sure the things he had seen were investigated. Herbert said, "it made sense to me to try to follow the book on this and clear myself." In late 1970, according to Wooten, he went to the Pentagon and reported the incidents. Following that, Herbert said he was threatened, cajoled and told to forget the whole thing. He said he was getting more and more frustrated waiting for something to happen as a result of the CID investigation.⁵³

Wooten said Herbert finally preferred formal charges

⁵²New York Times Magazine, Sep. 5, 1971, 33

⁵³Ibid. This is contrary to what Lt. Col. Herbert told Army officials at Fort McPherson, Ga., before the start of the media interest in the case. See Chapter II, 30

against Barnes and Franklin on Mar. 12, 1971, "less than a month before the expiration of a statute of limitations." He said the charges accused the two officers of dereliction of duty, misprision (concealment) of a felony and failure to obey regulations. Herbert said he had reported eight criminal allegations during his two months as battalion commander but that no inquiries were made.⁵⁴

Gen. Barnes said Herbert's charges were unfounded. He said that so far as he could remember, Herbert had not reported any alleged violations to him. He said his policy in Vietnam "was to make sure no atrocities were committed. Everybody knew it was much worse for us to kill the wrong people than to let a few of the enemy get away."⁵⁵

At the same time, Col. Franklin, who was in Vietnam, declines to comment on the charges and the Army would say only that it was "inappropriate for United States Army officials to comment on matters under official investigations."⁵⁶

AP said Herbert's troubles began in 1969 when as a battalion commander in the 173d Airborne Brigade "he reported

⁵⁴New York Times Magazine, Sep. 5, 1971, 33

⁵⁵Ibid. In a statement signed under oath in November 1970, Lt. Col. Herbert denied that he had ever directly reported any alleged war crimes to General Barnes (U.S. Army Fact Sheet, Dec. 7, 1971, op. cit., 8)

⁵⁶New York Times Magazine, Sep. 5, 1971, 33

to his superior officers, Brig. Gen. John Barnes and Col. J. Ross Franklin, incidents of murder and torture of Vietnamese civilians." AP made the statement without attribution, yet in the same story reported that the Army had dismissed formal charges against Franklin which accused him of a cover-up.⁵⁷

According to the AP, Herbert said he had first relayed his war crimes allegations to an unidentified staff judge advocate at Army Headquarters in Vietnam. Herbert claims he was advised to bring out the allegations in a hearing on his petition for redress. He further claimes that two of the allegations did come out, but were ruled irrelevant by Maj. Gen. Russ who had headed the inquiry.⁵⁸

Herbert said he again brought up his war crimes allegations in July 1969 at Fort Leavenworth, Kansas. Again, he said, he was brushed off by the staff judge advocate who claimed Herbert did not have enough evidence. Herbert said the staff judge advocate was not about to press charges against a general.⁵⁹

The Washington Post story by Peter Braestrup said Army sources indicated that investigators had confirmed seven of 21

⁵⁷ Washington Post, Oct. 4, 1971, A3:6. The information was basically the same as that contained in a Post-Dispatch AP article on Oct. 9, 1971, indicating that the background paragraphs were simply being carried forward.

⁵⁸ Washinton Post, Oct. 9, 1971, 1:4

⁵⁹ Ibid.

allegations of war atrocities that had been made by Lt. Col. Herbert. The sources revealed that two of the seven confirmed allegations related directly to Herbert's cover-up charges against Maj. Gen. Barnes. Braestrup also said in the same story that Herbert had "reportedly" received a \$175,000 advance on a book. No other newspaper studied published these reports. Braestrup was also the only journalist to correctly report that the poor efficiency report signed by Franklin and Barnes came "subsequent" to his relief from command on Apr. 4, 1969.⁶⁰

The New York Times was again careless in reporting this aspect of the Herbert case. Wooten wrote that Herbert filed his charges against Gen. Barnes and Col. Franklin on March 12, 1971, even though a New York Times article on March 16, 1971 reported the correct date as March 15. Wooten also stated that Barnes and Franklin's charges had included "misprision (concealment) of a felony." AP reported on March 16, 1971 that Herbert had planned to charge the two officers with concealing a felony but decided against it.⁶¹ The concealment charge was also not reported in the New York Times article on March 16, even though the March 12 article indicated that the concealment charge would be made. The

⁶⁰Washington Post, Oct. 10, 1971, A8:5

⁶¹Chicago Tribune, Mar. 12, 1971, 1A:7:3

Army said the two officers were charged with "failure to report and investigate alleged violations of the law of land warfare and for dereliction of duty."⁶²

Even though an AP report in the Washington Post was careful to attribute the claims to Col. Herbert, it did report that Herbert said he had not been permitted to cite war crimes in his earlier requests for redress, and since his relief he had twice attempted to report the war crimes -- once at Long Binh shortly after his relief from command, and again at Fort Leavenworth, Kansas, in July 1969.

Barry Lando, for CBS "Sixty Minutes" found that "Nowhere in the entire one hundred and sixty pages of transcript of the official inquiry into Herbert's relief" conducted by Maj. Gen. Russ in Vietnam "is there any mention by Herbert of war crimes." Also Gen. Russ denied that Herbert had raised the subject and so did the court reporter and the military lawyer assigned to Herbert's case.⁶³

According to Army records, Lt. Col. Herbert reported war crimes for the first time in September 1970, almost 18 months after he was relieved of command.⁶⁴ A year-long investigation by CBS producer Barry Lando also failed to provide any evidence

⁶²U.S. Army Fact Sheet, Nov. 5, 1971, op. cit., 5

⁶³Barry Lando, op. cit., 79

⁶⁴U.S. Army Fact Sheet, Nov. 5, 1971, op. cit., 3

that Herbert had earlier reported the alleged crimes. Mr. Lando said he contacted all Army officers to which Herbert said he tried to report the war crimes while in Saigon. While all recalled having discussed Herbert's request for a formal inquiry into his relief from command, each one denied that Herbert ever mentioned war crimes to them.⁶⁵

EDITORIAL SUPPORT

The New York Times, in its first editorial about Herbert, said his outstanding 24-year, up-from-the-ranks reputation, was "for all intents and purposes" being "cashiered" by the Pentagon. The Times said "justice for Colonel Herbert is an essential element in the case, but in a larger sense it is the Army's high command that is on trial. Nothing less than full redress for the innocent and punishment of the guilty, at whatever level, can be an acceptable outcome." The editorial said that when Herbert was prevented from stopping atrocities, he reported them to his superiors, "only to be told not to meddle." When he persisted, "he was made victim of a fraudulent 'efficiency report'. . . ." ⁶⁶

A few days after this editorial in the New York Times, Bob Cromie, columnist for the Chicago Tribune, joined in battle and told his readers that Lt. Col. Herbert was about

⁶⁵Barry Lando, op. cit., 78

⁶⁶New York Times, Sep. 5, 1971, IV:10:2

to get the "old heave-ho" from the Army because he had the courage "to blow the whistle" on "a chicken colonel who refused to listen when Herbert told him of witnessing the torture of prisoners in Vietnam, many of them women and children."⁶⁷

Cromie said that Herbert, reared in the Pennsylvania coalfields, had served a "star-studded combat stint in Korea" and also served with "great distinction" as the commander of a paratroop battalion in Vietnam. He also disclosed that it was the opinion of "many of his awed contemporaries" that Herbert "was a copper-riveted cinch to become a general officer."⁶⁸

"There was only one hitch," as Cromie saw it.

Herbert would not condone atrocities. When he saw them being committed, by both South Vietnamese troops and our own, he tried to stop them and he reported them. For this he was called a lair by his commanding officer, and also told simply to look the other way, and at last was relieved of his command and told he never would hold another.⁶⁹

Cromie said Herbert would be asked to resign from the Army next February. He said charges that had been brought against the full colonel who was a West Point graduate, "have

⁶⁷Chicago Tribune, Sep. 8, 1971, 1:22:1

⁶⁸Ibid.

⁶⁹Ibid.

been dropped, even tho the CID has verified their accuracy, and similar charges against a two-star general seem about to be swept under the tentboards as well." He said the major who had been investigating Herbert's allegations complained last April "of heavy pressures from unnamed sources and killed himself." Cromie added that "the colonel who told Herbert to look the other way" when he saw atrocities "still serves in Vietnam and presumably is regarded by someone higher up as a credit to the Army." Cromie said that despite proven cases of torture and murder, it appeared the only one to be punished is the man who tried to prevent the "savagery." "But Herbert came out of the ranks. He is not a trade-school graduate. Nor, obviously, is he a member of the old-school-tie bunch. It's doubtful he would care to be, in view of some of the members," Cromie concluded.⁷⁰

Nearly a month later, the New York Times again editorially supported Herbert. The editorial pointed out that Secretary Froehlke had agreed, after a delay of more than one year, and then only under Congressional pressure, to review "the disturbing case" of Lt. Col. Herbert. The Times pointed out that "at issue is whether Colonel Herbert's efforts, first to stop and then to report atrocities allegedly committed by American and South Vietnamese military personnel led, as he

⁷⁰Ibid.

maintains, to the reprisals against him. The Times reasoned that "elementary justice requires that attention be given first to the protection of Colonel Herbert's rights as man and soldier."⁷¹

The New York Times printed its third pro-Herbert editorial only three days later which hailed Herbert's vindication by the Secretary of the Army. It said Froehlke's action had removed the threat to Herbert's forced retirement and would allow him to return to the command position and promotion to which his combat performance entitled him. The Times said Herbert's "fall from grace stemmed from the repeated official remonstrations he felt obliged to make against alleged atrocities" committed by Americans and South Vietnamese. The Times said that Herbert's record "both as the Army's most-decorated enlisted man in Korea and as a combat commander in Vietnam gives extraordinary weight to the charges leveled by him against members of the Army in which he was devoted."⁷²

The St. Louis Post-Dispatch was next to defend Herbert and attack the Army for its inconsistent actions by "the vindication of Col. Herbert [removal of a damaging efficiency report by the Secretary of the Army], on the one hand, and

⁷¹New York Times, Oct. 7, 1971, 49:2

⁷²New York Times, Oct. 10, 1971, IV:14:4

the dismissal of charges against Gen. Barnes and Col. Franklin, on the other. . . ." The editorial suggested that although the action "avoided doing gross injustice" to Lt. Col. Herbert, it protected those that he accused. The Post-Dispatch said, without attribution, that after Herbert "objected to and reported the torture and killing of South Vietnamese civilians and Viet Cong prisoners" he was "derided", given a bad efficiency report, and relieved of his command by the officer who "unbraided him and refused to countenance his [Herbert's] report of atrocities." The editorial said Herbert took his case to the press "only after it became apparent that he could not get redress through official channels."⁷³

In its fourth editorial, New York Times complained that the Army continued to remain silent concerning the charges brought by Lt. Col. Herbert that atrocities had been committed in Vietnam by Americans and Vietnamese intelligence personnel. The Times suggested that it "can only create the suspicion that the Pentagon itself had joined in the alleged suppression of fact." The Times called for the release of the 3000 pages of testimony the Army claimed had been taken during the inquiry. It also questioned whether or not the voiding of Herbert's damaging efficiency report was perhaps "intended as

⁷³ St. Louis Post-Dispatch, Oct. 17, 1971, 2C:2

a deal to persuade Colonel Herbert to let the case rest?" The editorial further complained that total, rather than grudging and partial, restoration of Herbert's rights and honors is still a matter of simple justice. They point out that Herbert will remain in "a phantom job" and had still not been promoted.⁷⁴

The New York Times told its readers editorially, and without attribution, that Lt. Col. Herbert had reported war crimes to his superiors, "only to be told not to meddle," and when he persisted, he was made victim of a "fraudulent" efficiency report. By this time, charges of cover-up against Col. Franklin had already been dropped and there remained only Herbert's unsubstantiated claims that he had reported the atrocities. This was not made clear to Times readers. In a later editorial, the Times again published the commonly reported, but unsubstantiated, statement that Herbert was the "Army's most-decorated enlisted man in Korea."

The Post-Dispatch did much the same thing. The editorial said without attribution that Herbert reported crimes of torture and killing to Gen. Barnes and Col. Franklin and that these reports had resulted in his relief from command. Army investigations failed to substantiate either "fact". In the same editorial the Post-Dispatch also said cover-up charges

⁷⁴New York Times, Oct. 26, 1971, 40:2

had been dropped against both officers accused by Herbert.

Chicago Tribune columnist Bob Cromie, on Sep. 8, 1971, published a column that was filled with unsubstantiated Herbert claims that lengthy investigations failed to prove. In almost a flippant tone, Cromie made several points that were not factual.

He said Herbert was about to get "the old heave-ho" for having the courage "to blow the whistle" on "a chicken colonel" who refused to listen when Herbert reported war crimes to him.

In the first place, Herbert was getting the "old heave-ho", as Cromie put it, because he failed to be selected for promotion to regular Army major, not because of any war crimes he did or did not report. The efficiency report that apparently caused his non-selection, said nothing about war crimes or their reporting. The statement that Herbert reported war crimes to the "chicken colonel" was never substantiated.

Cromie also said charges against "the full colonel" had been dropped, "even tho the CID has verified their accuracy. . . ." This is not true. CID investigators determined that certain atrocities reported by Lt. Col. Herbert did happen. Col. Franklin and Gen. Barens, however, were not charged with having committed war crimes, but with their possible cover-up by not having properly reported and in-

vestigated them. No evidence was developed to indicate that Herbert reported any war crimes to either Col. Franklin or to Gen. Barnes.

HERBERT PASSES LIE DETECTOR TEST

All papers studied except the Los Angeles Times reported that Col. Herbert had successfully passed a lie detector test. While the Post-Dispatch used an AP report, the other four published a by-lined article. All accounts revealed that Charles Morgan Jr., director of the regional office of the American Civil Liberties Union, announced on behalf of Lt. Col. Herbert, that a lie detector test indicated Herbert was telling the truth when he said he had reported war atrocities to Col. Franklin and Gen. Barnes.

Fred Farrar of the Chicago Tribune said Herbert had asked Army officials on September 2 that both Gen. Barnes and Col. Franklin also submit to lie detector tests, but was told "There would be no lie tests for Barnes and Franklin."⁷⁵

A Washington Post account said Herbert took the test on September 3 from Benjamin F. Mallinowski, a retired Army warrant officer and a polygraph expert with offices in Atlanta, who had been agreed upon by both the Army and Herbert.

Herbert answered yes to two relevant questions during the test.

⁷⁵Chicago Tribune, Sep. 8, 1971, 1:3

1. Did you on or about Feb. 14, 1969, advise Col. Franklin of the killing of Vietnamese detainees?

2. On or about Apr. 4, 1969, did you personally request Gen. Barnes to conduct an investigation?

According to Mallinowski, Lt. Col. Herbert did not exhibit any specific responses which indicated deception when he answered "yes" to the relevant questions.⁷⁶

Herbert's attorney said the test was scheduled to have been conducted in Washington at a September 7 hearing, but the hearing had been canceled without explanation.⁷⁷ AP said Kenneth A. Rosenblum notified Mr. Morgan of the cancellation on September 2.⁷⁸ In the New York Times story, James T. Wooten again erroneously said that both Gen. Barnes and Col. Franklin had been charged with "concealment of a felony."⁷⁹

GENERAL BARNES CHARGES DROPPED

Only four of the six newspapers studied reported that charges against General Barnes had been dropped. Again the Washington Post was the only newspaper to carry a by-lined article, again by Michael Getler and Peter Braestrup

⁷⁶Washington Post, Sep. 8, 1971, A9:1

⁷⁷Atlanta Constitution, Sep. 8, 1971, 8A:4

⁷⁸St. Louis Post-Dispatch, Sep. 8, 1971, 2C:1

⁷⁹New York Times, Sep. 8, 1971, 5:1

Getler and Braestrup reported that Maj. Gen. Roland M. Gleszer, commanding general of the Military District of Washington, said on October 15, that charges against Maj. Gen. Barnes for dereliction of duty had been dropped. The article said "the Army action appears to bring to a close another of the highly publicized episodes stemming from the Vietnam war in which U.S. military men have challenged each other's conduct in the war zone." Herbert said he bore no malice against Barnes, but added, "everybody can't be telling the truth." The Post was not able to reach Gen. Barnes for comment because he was out of the country on temporary duty.⁸⁰

In making the announcement, Army officials were careful to explain that the information referred only to cover-up charges against Gen. Barnes and not to any specific allegations of war crimes made by Lt. Col. Herbert. The Army also reported that the Military District of Washington investigation of charges against General Barnes involved 52 witnesses, over 100 documents and memoranda and resulted in 3000 pages of sworn testimony.⁸¹

The Army also verified that of the 21 war crimes alleged by Lt. Col. Herbert, seven had substance, two were previously investigated and disposed of by the 173d Airborne Brigade, and

⁸⁰Washington Post, Oct. 16, 1971, 1:8

⁸¹Ibid., A4:1

two others involved Vietnamese against Vietnamese and did not fall under U.S. jurisdiction. Another three charges had substance, the Army said, and had been sent to field commanders for disposition. None of these, however, involved Barnes and he did not know about them, the Army said.⁸²

In what sounded like Herbert was shutting the door on the case, he said he would not press further charges in the Barnes case. "I'm not judge, jury and executioner," he said. "It's between Congress, the Army and the American people." Herbert also said he would not remain in the Army past Feb. 29, 1972, because he had not been able to clean up the Army from the inside. "I'll have to go the other route," he said. "I will have to get out." He said the Army had not asked him to stay in.⁸³

With that, it appeared that all charges placed by Herbert had fizzled and died. What was not apparent, however, was the power of public appeal to keep the charges alive.

⁸²Ibid.

⁸³Ibid.

CHAPTER IV

PUBLIC APPEAL

Even though charges had been dropped against both Gen. John W. Barnes and Col. J. Ross Franklin, the Herbert case continued to receive media attention.

The New York Times, the Washington Post, the St. Louis Post-Dispatch and the Los Angeles Times all reported that President Nixon had approved Herbert's promotion. All but the New York Times reported the story accurately that Herbert's promotion was from permanent captain to permanent major. The New York Times said the Army recommended Herbert "be promoted to full colonel October 20."¹ The New York Times did report it accurately the following day in another story. The reports carried in the other three newspapers added the fact that the promotion was retroactive to August 1970. A UPI report in the Washington Post also said Herbert would become eligible for promotion to colonel in 1974 or 1975.² The Los Angeles Times

¹New York Times, Nov. 3, 1971, 15:1

²Washington Post, Nov. 3, 1971, A2:7

report called Herbert "the much decorated" Army officer rather than the frequently reported "most decorated."³

THE DICK CAVETT SHOW

The New York Times, St. Louis Post-Dispatch and Washington Post promotion stories also contained a report on a controversy surrounding Herbert's unsuccessful attempt to appear on the November 2 Dick Cavett Show on ACB television. The Atlanta Constitution ran a separate story on the incident.⁴

The New York Times said there were conflicting reports why Herbert did not appear. It explained that Herbert had been expected to go to New York to tape the show, but the Army refused him the time off. Pentagon officers said Herbert had already been away several times since September 1. Herbert agreed to a subsequent ABC-TV offer to appear on a split-screen from Atlanta, the New York Times continued, but that plan also failed to work. According to a spokesman for Herbert, the reason Herbert did not appear on split-screen from Atlanta was because a promised written consent from the Army was received by Herbert at 5:55 p.m. just five minutes before the taping was to begin some 11 miles away. The Army

³Los Angeles Times, Nov. 4, 1971, 2:3

⁴Although Lt. Col. Herbert did not appear on the Dick Cavett Show that evening, Cavett showed a video tape of Herbert's Sep. 30, 1971 appearance and explained to a nationwide audience how the Army prevented Herbert from appearing on the program again that night.

contended the permission had been given one hour before the taping was scheduled to begin.⁵ The following day, James T. Wooten said Army records at Fort McPherson verified that the permission had been given at 5:55 p.m.⁶ According to an earlier New York Times story, Herbert said his commanding officer told him, "If you're planning to go on Mr. Cavett's show, you can forget it!"⁷

The Atlanta Constitution and the St. Louis Post-Dispatch carried a slightly different version of the Cavett show controversy. Both said Herbert did not appear at the Atlanta studio for the split-screen taping because of doubt over whether or not Herbert actually had Army permission to do so. Phil Gailey in the Constitution went even further. He quoted an Army spokesman as saying Herbert had been given permission to appear but Herbert had decided at the last minute that he wanted the permission in writing. Gailey was not able to reach Herbert for comment.⁸ An UPI report in the Washington Post quoted Herbert's lawyer as saying that Herbert had received permission to appear on the Cavett Show, but did not discuss it further.⁹

⁵New York Times, Nov. 3, 1971, 15:1

⁶New York Times, Nov. 4, 1971, 21:1

⁷New York Times, Nov. 2, 1971, 4:6

⁸Atlanta Constitution, Nov. 3, 1971, 13A:1

⁹Washington Post, Nov. 3, 1971, A2:7

The Army version of the story differed somewhat from Herbert's. Col. L. B. Mattingly, Third Army information officer at Fort McPherson, said Herbert had orally requested permission to appear on national television about mid-afternoon on November 2. He was told to submit his request in writing which did not get to the Post Commander until about 4 p.m. At 4:30 p.m., Herbert's supervisor was told that Herbert's request would be approved. The supervisor attempted to contact Herbert in his office, only to find that Herbert had gone home. At 4:55 p.m., the supervisor reached Herbert at his residence, some 15 minutes from Fort McPherson, and told him that the request, bearing written approval by the post commander, was ready at the Headquarters. Herbert arrived to pick up the approval at 5:55 p.m. Mattingly described Herbert's actions that afternoon as being "stubborn to the point of childishness."¹⁰

CONTINUED HARASSMENT

The following day, all newspapers studied except the Los Angeles Times reported continued harassment of Lt. Col. Herbert. While the St. Louis Post-Dispatch used a New York Times news service report, the other four used by-lined articles from staff writers.

According to the Post-Dispatch article, as well as a

¹⁰Letter from Col. L. B. Mattingly, Nov. 17, 1971, to Mr. Dick Cavett, American Broadcasting Company, New York, N.Y.

New York Times story by James T. Wotten, informed sources said Herbert had been forced to take saluting instructions from Fort McPherson's Acting Post Commander on Wednesday, November 3. Herbert's attorney called it "purposeful harassment." According to the source, Herbert had gone to the office of Col. Tom Reid to seek blanket permission to appear on radio and television. This was denied. Herbert was reportedly told he must get permission each time. The sources said the harassment started when Herbert rose to depart and gave the customary salute. The following exchange then occurred, according to the source:

Reid: Close your fingers.
Herbert: I think they are closed, sir.
Reid: Tilt your hand.
Herbert: I think it is tilted, sir.
Reid: Tilt your fingers in so you can see them.
Herbert: Like this, sir?
Reid: You slurred the word, Sir! Say it sharp.

When asked about the incident, Col. Reid replied, "The best answer I can give you is that military discipline must be maintained at all times." According to the same report, the Army had also informed Herbert that he was under suspicion of being absent without leave the previous Saturday. The Army also denied three requests by Herbert for some of his 63 days accumulated leave. Herbert's attorney called it deliberate harassment.¹¹

¹¹New York Times, Nov. 4, 1971, 21:1, and St. Louis Post-Dispatch, Nov. 4, 1971, 1:2

James T. Wooten further reported that the Army had instructed Herbert to refrain from speaking with members of the news media without specific permission from his commanding officer. In a later paragraph, Wooten appeared to clarify "media" as "national media" by saying that Herbert had asked permission to appear on national news media during his off-duty hours and while on leave. Reid said permission would be given on a case-by-case basis.¹²

The Washington Post, in an article by George C. Wilson, carried a more balanced report of the alleged harassment. Wilson talked to Charles Morgan, Herbert's attorney, to Maj. Gen. Winant Sidle, Army chief of information, and to Col. L. B. Mattingly, Third Army information officer, before publishing his account of the incidents. Herbert's attorney said the Army was harassing Herbert in an effort "to shut him up." The Army termed the charge "ridiculous." Morgan said he believed the Army had loosed people on Herbert to intimidate him. Gen. Sidle told the Post that he had looked into the situation and believed the charges were overstated or unfounded. Col. Mattingly explained the saluting incident. He contended, first of all, that there had been no meeting between Reid and Herbert on Wednesday, but acknowledged that Herbert had been admonished by Reid during a meeting on Monday.

¹²New York Times, Nov. 4, 1971, 21:1

The admonishment came, according to Mattingly, because of Herbert's "rather insolent and arrogant attitudes." Col. Mattingly said Reid had ordered Herbert to improve his salute and forced him to repeat it. "Let's have that again, Colonel," is what Reid said, according to Mattingly. Mattingly also defended what Herbert had called his "do-nothing job" in industrial operations. Mattingly said Herbert had several complex projects to complete, including a survey of family housing and a feasibility study of a self-service supply center at Fort McPherson. Herbert's lawyer claimed that so far in his new job Herbert had been required to initial one letter and to make a one sentence recommendation. Wilson was not able to reach Herbert for comment.¹³

Phil Gailey in the Atlanta Constitution also spoke to an Army spokesman at the Pentagon and at Fort McPherson, as well as to Herbert's lawyer, before filing his report. According to Herbert's attorney, Herbert had been ordered by the Army not to talk to the media without special permission. An Army spokesman, however, told Gailey that Herbert could talk to local media without permission, but that Army regulations required special permission to appear on national media. In such cases, permission would be on a case-by-case basis.¹⁴

¹³Washington Post, Nov. 5, 1971, A12:4

¹⁴Atlanta Constitution, Nov. 5, 1971, 23A:1

James T. Wooten, for the Sunday New York Times, wrote a brief recap of the Herbert case and repeated the alleged Army harassment that Herbert had reported during the "weirdest week" of his life. Wooten also included in this story three sentences about the Army's 2,500-word fact sheet released on November 5. According to Wooten, the Army said there was no documentary evidence that Herbert ever reported the alleged war crimes to either Gen. Barnes or Col. Franklin. Wooten also quoted an unnamed Pentagon spokesman as saying the Army's fact sheet was the "official last word." Wooten contended that "despite the frenzy of the week" the question remained: "Is Colonel Herbert a liar -- a fraud seeking self-aggrandizement at the expense of his fellow officers in the Army in which he has spent more than half his life? Or, on the other hand, is he telling the truth?" If he is telling the truth, Wooten suggested, ". . . is the Army involved in a purposeful concealment of facts and evidence that could vindicate Colonel Herbert?" Wooten said some possible clues did exist. He said certain Army sergeants claim they can corroborate two of the atrocities. In addition, "confidential Pentagon sources say the fact of the crimes has been established by Army investigations." Besides that, Wooten continued, Herbert passed a lie detector test. Wooten complained that a record of more than 3,000 pages which had been prompted by Herbert's formal charges, and which might provide some help in answering

the question of Herbert's veracity, had not been made public by the Army.¹⁵

Several Herbert allegations of harassment were discussed during an interview of four Army officers from Fort McPherson by Phil Gailey of the Atlanta Constitution. The officers said they had agreed to the interview because they were concerned about the publicity that had been given Herbert's claims that he had been treated like a raw recruit.

Col. Tom Reid, who had been acting post commander at Fort McPherson, during some of the cases of alleged harassment, said Herbert's story of having received saluting instruction from him was "fabrication." Reid said the meeting with Herbert had been on November 1 and not November 3 as claimed, and after that meeting he had reprimanded Herbert because he failed to salute as he left the office. Reid said Herbert had been "surly, insolent and his actions bordering on insubordination." While Reid was telling Herbert he expected from him "the utmost in the standards of integrity, professionalism and performance of duty. . ." Reid said Herbert looked out the window like he was bored. When Herbert left Reid's office "he failed to salute and said, 'Good day, sir'," Reid recalled. "I ordered him back and required him to render the proper salute. He acknowledged and I told him that he could do better. He saluted again and said, 'Airborne

¹⁵New York Times, Nov. 7, 1971, IV:5:4

sir.' I returned the salute and replied, 'All the way.' That was all there was to it." Lt. Col. Charles Paulk, Herbert's commander in the office of industrial operations said he was in the office at the time of the saluting incident and vouched for Col. Reid's version.¹⁶

Gailey said other officers described other incidents in which Herbert was arrogant and failed to observe military courtesy. Col. Mattingly, Third Army information officer, also denied again that the Army had prohibited Herbert from talking to reporters. According to Mattingly, Herbert was told he could speak to reporters on his own time, but must receive Pentagon clearance before appearing on national radio or television. Mattingly said Herbert's insistence to reporters that he was being muzzled by the Army, was "just not true." Col. George R. Hawley, Jr., Fort McPherson post commander, told Gailey that Herbert's charge that his phone calls had been monitored and his mail opened was not true. He said the investigation into the charge of mail tampering was in limbo waiting "for Lt. Col. Herbert to bring out all this evidence he claims to have."¹⁷

¹⁶Atlanta Constitution, Nov. 11, 1971, 20A:1

¹⁷Ibid.

ARMY FACT SHEET

On Nov. 5, 1971, the Army released, for the first time, a fact sheet which discussed Herbert's war crimes allegations. Only Kenneth Reich for the Los Angeles Times and Gregory Jaynes for the Atlanta Constitution filed separate reports. The information for both articles came primarily from the 2,500-word fact sheet. Neither reporter was able to reach Lt. Col. Herbert for comment. The St. Louis Post-Dispatch, the Washington Post and the Chicago Tribune did not report the contents of the fact sheet, while the New York Times mentioned it briefly in another story.

Gregory Jaynes pointed out that Herbert had accused Gen. Barnes and Col. Franklin almost 18 months after Herbert was relieved of his command in Vietnam. The story also said the Army could not find documentary evidence or even a corroborating witness to indicate Herbert had reported or even mentioned war crimes or atrocities -- orally or in writing -- while serving in Vietnam. The fact sheet did say, however, that 7 of 21 allegations of war crimes made by Herbert did merit further investigations; and then explained that 2 of the 7 had already been acted on; another 2 involved Vietnamese against Vietnamese and only three remained under investigation.¹⁸

¹⁸ Atlanta Constitution, Nov. 6, 1971, 5B:3

Kenneth Reich filed the most complete report on the fact sheet resulting in the most thorough report published about the case in the eight months the case had been news. He indicated that the fact sheet had cast doubt on Herbert's claims, and pointed out some results of the Army investigation:

- The transcript of Herbert's five-day hearing in Saigon regarding his relief from command did not reveal that Herbert or any of the other 37 witnesses had raised the war crimes issue.

- Herbert had not discussed war crimes in his two appeals of an adverse efficiency report he filed in September 1969 and September 1970.

- The Army was completely unaware of Herbert's charges until Sep. 28, 1970, when Herbert told the Army Inspector General at Fort McPherson about his allegations.¹⁹

Reich, who called Herbert the most decorated American soldier in the Korean war, said he had not been able to reach Lt. Col. Herbert for comment, but was able to talk with Herbert's lawyer who said any comment would probably be made by him rather than Herbert. Reich had, however, talked to Herbert two weeks earlier following a comment by an Army spokesman that a fact sheet might be forthcoming. In that interview, Herbert again insisted he had raised the war crimes

¹⁹Los Angeles Times, Nov. 6, 1971, 1:7

story almost immediately after his relief from command. Herbert also told Reich that he had not been allowed to bring up the war crimes allegations at the inquiry into his relief from command conducted by Maj. Gen. Joseph R. Russ and named three colonels to whom he said he had reported atrocities. Reich said he contacted the three colonels. Two of them denied Herbert's claim while a third said he had heard Herbert mention allegations during informal conversations at Fort Leavenworth, Kansas in 1969, but denied that Herbert had suggested that higher authorities be notified. Reich also interviewed Col. Reid about the saluting instruction incident. Col. Reid said he had ordered Herbert to salute before he left his office, but denied that he had subjected Herbert to any saluting instruction. Reich reminded his readers that Herbert's adverse efficiency report that had first blocked Herbert's promotion had been ordered stricken from his record by Secretary of the Army, Robert F. Froehlke. Reich suggested that "although ranking Army officials apparently hoped by this [removing Herbert's damaging efficiency report] to reach a compromise that would quiet the controversy, Herbert has gone on making charges of a coverup of atrocities and has said he may leave the Army and carry on his crusade by political means." Reich said all charges against Gen. Barnes and Col. Franklin had been dropped.²⁰

²⁰Ibid.

HERBERT TO RETIRE

All six newspapers reported Herbert's decision to retire from the Army. The Chicago Tribune used wire service copy, the Washington Post used an AP story, the St. Louis Post-Dispatch used a two-sentence non-attributed cutline under a one-column photograph of Herbert, while the New York Times ran a piece by James T. Wooten, the Los Angeles Times a story by Kenneth Reich and the Atlanta Constitution a story by Phil Gailey. The Post-Dispatch also published an editorial.

The Washington Post said the "highly decorated veteran" who had accused his superior officers of concealing atrocities had announced he would submit his request to retire on Monday. The announcement was made by Herbert's attorney, Morris Brown, because, according to Brown, Herbert "is under the impression the Army has prohibited him from doing so without written permission from superiors." The story again called Herbert "America's most decorated soldier."²¹

The St. Louis Post-Dispatch said Herbert announced he would retire in February. The "heavily decorated veteran of Korea and Vietnam," the Post-Dispatch story said, cited "intolerable pressures" on his family as the reason for his decision.²²

²¹Washington Post, Nov. 8, 1971, A7:1

²²St. Louis Post-Dispatch, Nov. 8, 1971, A7:1

The Chicago Tribune said Herbert's announcement came less than a week after his promotion had been approved. "The most decorated enlisted soldier of the Korean war," the Tribune said, charged that the Army had harassed him and spurned his allegations of cover-up against two high-ranking officers. In making his announcement, Herbert told the press that "on the field of battle, both as an enlisted man and as an officer, I have served to the best of my ability. In that service, I have been shot five times, none of which was as painful to me as the decision I must now announce." He said he had struggled for 2-1/2 years to "eliminate the stigma of the concealment of war crimes" he had either personally seen or knew about. He said the actions by some members of the Army, both in the Pentagon and locally, had convinced him that seeking correction from within the Army was useless. Herbert stated that he had no intention while he remained on active duty of violating the Army imposed restrictions which forbade him from stating his views to the media. Herbert's attorney said Herbert had been repeatedly denied the right to speak freely about the charges. The Tribune, in providing background on the story, said Herbert had charged Gen. Barnes and Col. Franklin with both dereliction of duty and "concealment of a felony."²³

²³Chicago Tribune, Nov. 8, 1971, 1:1. Concealment of a felony was not a charge against Gen. Barnes and Col. Franklin. See discussion in Chapter III, 84

In another page one report, Phil Gailey reported the story for the Atlanta Constitution. Gailey reported much the same details as the Tribune, but added that Herbert had been advised by his wife's personal physician that the stress could "no longer be borne safely by the family." Herbert said he would ask for leave so he could remove his wife and daughter from the strain. Mr. Gailey repeated Herbert's charges of harassment and Herbert's claim that, he had been relieved because he had reported war crimes. Gailey said the Army insisted there was no connection between Herbert's charges, his relief from command, and his poor efficiency report.²⁴

James T. Wooten, in the New York Times, also reported Herbert's announced retirement. Wooten called Herbert a 41-year-old career soldier, a combat hero of two wars, and "this country's most decorated enlisted man in the Korean war." Wooten also said Herbert would be eligible to retire on Feb. 29, 1972, and would receive the retirement pay of a major, his permanent rank.²⁵ Wooten also said that a U.S. Army fact sheet released the past Friday had said there was no documentary support for the complaints Herbert brought against

²⁴Atlanta Constitution, Nov. 8, 1971, 1:7

²⁵Department of the Army regulation 635-100, change 15, p. 4-10, states that an officer retires with the highest grade satisfactorily held for at least 185 days, which in Herbert's case was lieutenant colonel.

"a general and a lieutenant colonel." Wooten said Army authorities at Fort McPherson were unavailable for comment and that Pentagon officials declined to comment. Wooten also repeated the incidents of alleged harassment Herbert had allegedly undergone that week and pointedly stressed that the Army had released its fact sheet to the media and mailed it to every member of Congress "after ordering Colonel Herbert to stop talking with the press."²⁶

Kenneth Reich, for the Los Angeles Times, in his second by-lined story about Herbert in three days, reported that Herbert's lawyer charged that "Army restrictions on Herbert's contacts with the news media were such that he could not reply to the 'fact sheet' except through 'Army-approved people at Army-approved times and in an Army-approved manner'." Brown said a reply by Herbert would not be necessary if the Army would release the documents upon which it says its fact sheet was based. Brown said he advised Herbert that withholding the information was a violation of military law as well as the U.S. constitution.

An Army spokesman at Fort McPherson told Reich that Herbert's charges of Army harassment during the past week was "so far out of phase with facts that I call it fantasy or

²⁶New York Times, Nov. 8, 1971, 7:1

worse." The spokesman accused Herbert and his lawyers of "such distortions of fact as to constitute a fiction."²⁷

Reich also provided the only published documentation of the Army's position regarding Herbert's claim that he was no longer allowed to speak with the media without specific permission. Reich quoted part of an official Army memorandum dated November 5 from Col. Reid, acting post commander at Fort McPherson, which advised Lt. Col. Herbert:

There is no objection to your dealing with representatives of the media provided (a) you understand that you are responsible for your utterances; (b) you limit media contact to times outside normal duty hours, 7:45 a.m. to 4:30 p.m., Monday through Friday; (c) there is no expense to the government involved and; (d) the dealings do not disrupt or interfere with any specific official duties for which you are responsible during other than normal duty hours.²⁸

Col. Reid further advised Herbert, according to Reich, that Herbert had a "personal responsibility to request specific permission through command channels" if he desired to accept an invitation to appear on national network radio or television. Despite this, Herbert's lawyer continued to insist that Herbert "must now. . . submit requests for each interview to the Pentagon for approval."²⁹

²⁷Los Angeles Times, Nov. 8, 1971, 1:2

²⁸Ibid.

²⁹Ibid.

Both the Los Angeles Times and the New York Times reported that the Army had agreed to grant Lt. Col. Herbert 30 days leave following his announced plans to retire. According to an AP report in New York Times, Herbert said that neither he, his wife nor their 12-year-old daughter could continue under the intolerable pressures brought by the Army. In a statement issued by Morris Brown of the ACLU, Herbert said stress on his family and personal harassment by the Army were contributing factors to his decision to ask for retirement. "Herbert denied that he was seeking publicity."³⁰ In the Los Angeles Times report, Herbert was quoted as saying, "I am not going to subject my family to it any longer." The Times called Herbert a "highly decorated combat officer."³¹

MCGOVERN JOB OFFER

Both the Los Angeles Times and the New York Times reported that Herbert was planning to join the staff of Senator George McGovern. A UPI report in the Los Angeles Times, however, said Herbert had denied it. McGovern had announced during a speech in Washington that Herbert would join his staff and function as a military and veterans advisor. Herbert said it was all a misunderstanding. Herbert confirmed that he had been offered a job by McGovern, but said "I don't

³⁰New York Times, Nov. 9, 1971, 25:1

³¹Los Angeles Times, Nov. 9, 1971, 2:4

believe a man in uniform has the right to discuss politics or make political statements, and since I don't believe others should do it, I certainly won't do it." Herbert concluded that his statement to McGovern that the job offer be put in writing had apparently been mistaken as an acceptance.³²

The following day both papers carried a follow-up report that McGovern expected Herbert to join his staff following Herbert's retirement. An aide to McGovern said, "our feeling is that he'll be with us on March 1972."³³ McGovern said, "I am certain that I can look forward -- upon his retirement -- to the advice and counsel on military matters and veterans affairs which he is so qualified to give." In a telephone interview, Herbert admitted he was interested in the position, but repeated that he would not make a decision while he remained on active duty.³⁴

MORE EDITORIAL SUPPORT

Bob Cromie published his second pro-Herbert column in the Chicago Tribune and attacked the Army for the way they handled the Herbert case. "Surely," he said, "no organization could make so many tactical mistakes without highly skilled help." He charged that the Army tried to ease Herbert back

³²Ibid., 2:5

³³Los Angeles Times, Nov. 10, 1971, 16:1

³⁴New York Times, Nov. 10, 1971, 43:1

into civilian life by using an unsatisfactory efficiency report prepared by one of the two officers Herbert had accused of covering up war crimes. He also related harassment charges Herbert had discussed on the Dick Cavett show and added that Army permission to appear a second time on the Cavett show had been given only five minutes before the taping was scheduled to begin. Cromie reasoned that "the Army must find it embarrassing to have such matters discussed by an eye-witness," and called the Army's treatment of Herbert an "inexcusable campaign of vilification and harassment." He said that since Herbert can no longer be forced to take involuntary retirement because Secretary Froehlke removed a damaging efficiency report from his record, the campaign by the Army "to heckle him into retirement seems to be gathering momentum."³⁵

The New York Times, in its fifth pro-Herbert editorial in some three months said that even though Herbert had been "undaunted by two wars and eight injuries on the battlefield," he had surrendered to the intolerable pressure by the Army on him and his family. The editorial said Herbert's request to retire had come despite the removal of a "slanderous efficiency report" from his record and he had recently been promoted to regular Army major. The Times said, "The question

³⁵Chicago Tribune, Nov. 6, 1971, 1:10:1

is simply whether an officer with an outstanding record has told the truth about incidents which, if they did actually take place, would make efforts to cover-up nothing less than complicity in war crimes." The official silence about the extensive testimony in the Herbert case was even more suspicious, according to the editorial, because of the "Army's persistent efforts to muzzle Colonel Herbert and recent lamentable attempts. . . to humiliate him by gratuitous lessons in how to salute. . . ." The editorial said the absence of full disclosure of testimony taken in the Army's investigation, the "somewhat reluctant vindication and subsequent promotion of Colonel Herbert, coupled with the far more emphatic dismissal of all charges against those officers he accused of covering up the facts, suggest the offer of a deal which the colonel -- predictably -- refused to accept." Herbert's retirement, as the Times saw it, would leave Herbert free to battle for "the integrity and effectiveness of the U.S. Army," as well as his personal honor.³⁶

The Post-Dispatch said the Army had "succeeded in hounding one of its most decorated soldiers" out of the service "through tactics that reek of cheap revenge and pettiness." The editorial said the Army had trumped up "patently phony efficiency reports" which questioned Herbert's

³⁶New York Times, Nov. 11, 1971, 46:2

dependability and moral courage and when that failed they embarked on a campaign to humiliate him. The Post-Dispatch reasoned that Herbert might well have been able to stand the pressure, but the pressure on his wife had become intolerable. The editorial ended by suggesting that in the long run the country might gain from the experience because once retired, Herbert could be expected to make his accusations public.³⁷

ARMY PLOT CHARGED

The New York Times, Washington Post, and Los Angeles Times all carried a UPI story and the St. Louis Post-Dispatch an AP story which reported Herbert's charge that the Army was seeking his "destruction" by spotting newspaper articles across the country. UPI pointed specifically to interviews in the Phoenix Arizona Republic and the Chicago Sun-Times in which Maj. Gen. Barnes accused Herbert of beating unarmed Vietnamese villagers and conducting himself like "a cold-blooded killer." Paul Dean, aviation editor for the Arizona Republic denied that he had been approached by the Pentagon.³⁸ In the New York Times article, Gen. Barnes was quoted as saying Herbert gave him "the gut feeling that he was a cold-blooded killer who would be disastrous in the coming pacification role."³⁹ The Washington Post called Herbert the most

³⁷St. Louis Post-Dispatch, Nov. 9, 1971, 2C:3

³⁸Los Angeles Times, Nov. 13, 1971, 18:1

³⁹New York Times, Nov. 13, 1971, 16:2

decorated American noncommissioned officer in the Korean war and added that despite the controversy, the Senate had that day voted Herbert his promotion. Herbert's lawyer said "The Army has decided its newest tactic will be the destruction of Col. Herbert. . . . It [the Army] has public relations people working with select reporters across the country."⁴⁰

While the Los Angeles Times and the Atlanta Constitution reported interviews with Gen. Barnes, the New York Times published a letter to the editor which complained that President Nixon had not intervened on behalf of Lt. Col. Herbert who, according to the reader, was being "purged by his peers." The reader indicated that the President both spoke and acted on behalf of a convicted mass murderer [Lt. William F. Calley] but would do neither "on behalf of this country's most decorated veteran of the Korean conflict." The reader called it "the absolute degradation of our system of values."⁴¹

In another New York Times story on the same day, it was reported that Herbert's war with the Army had "erupted with renewed fury." While the "bemedaled hero of two wars" announced his retirement because of "intolerable" pressures on his family, the story said, he "found himself attacked as

⁴⁰Washington Post, Nov. 13, 1971, 10:2

⁴¹New York Times, Nov. 14, 1971, IV:12:4

an inadequate soldier, a liar, and 'a cold-blooded killer'" by Gen. Barnes, one of the officers he had earlier accused of covering up war crimes. Gen. Barnes reportedly said Herbert was the worst of 20 battalion commanders who worked for him, had failed to "play his part as a member of the brigade team" and "gave me the gut feeling that he was a cold-blooded killer. . . ." As far as Herbert having passed a lie detector test, Gen. Barnes speculated, "I suppose that if you live a lie long enough you can pass a lie test."⁴²

The Atlanta Constitution carried a brief AP interview with Gen. Barnes that had been conducted in his Washington, D.C. home. Gen. Barnes said he had removed Herbert as battalion commander in Vietnam "because I couldn't believe anything he said." Barnes said Herbert was "a lousy battalion commander" because he preferred being on the ground firing his M16 rifle with infantry squads than running the operations of his battalion. In the interview, Gen. Barnes denied that Lt. Col. Herbert ever told either him or Col. Franklin of having witnessed atrocities in Vietnam.⁴³ This was the last story published in the Constitution until February 1973 when Herbert's book Soldier was reviewed.

The Los Angeles Times, however, published two more

⁴²Ibid., IV:3:5

⁴³Atlanta Constitution, Nov. 14, 1971, 4B:1

stories about the Herbert case and then nothing more. The Times did not, publish a review of Soldier. The two final stories came on Nov. 14, 1971. One was an interview with Gen. Barnes by Rudy Abramson. The other story, by Kenneth Reich, discussed a letter from Herbert to Congressman John H. Dent (R-Pa.) in which Herbert rebutted the information contained in the Army fact sheet.

Abramson, after reporting many of the same statements from Gen. Barnes that were reported by the AP, said Barnes claimed to have written a warning letter to Herbert more than two weeks before he was relieved which said Herbert had "created unnecessary and unjustified friction" between himself and Barnes' principal staff officers.⁴⁴ The letter was written a month after Herbert claims to have told Franklin about the St. Valentine's Day massacre. Abramson pointed out that Barnes had given several interviews in recent days and that a former Army helicopter pilot had said he saw Herbert beat several Vietnamese woodcutters.⁴⁵ (The St. Louis Post-Dispatch carried an AP report on November 12 which said Herbert had been accused of having beat up the woodcutters.)

⁴⁴See Chapter III, 72, for a discussion of this letter and a second warning letter written to Herbert before his relief as battalion commander in 1969.

⁴⁵Los Angeles Times, Nov. 14, 1971, 3:3

HERBERT REBUTS "FACT SHEET"

Kenneth Reich's report was based primarily on a copy of a letter from Lt. Col. Herbert to Representative Dent which Reich had obtained from independent sources after Herbert's attorney refused to make the contents of the letter public. Reich said the letter was dated November 8, three days after the Army issued a 2,500-word fact sheet "casting doubt on Herbert's story." In the letter, Herbert repeated his claims that he had attempted to report war atrocities earlier than September 1970, but had not been allowed to. Herbert told Dent he had not been allowed to raise the atrocities question during his hearing in Saigon for redress of wrong which grew out of his relief from command. Herbert said, "it was only when I retained a civilian lawyer (in September 1970), who prepared a complaint for me in the U.S. District Court here (in Atlanta) that I was allowed to file my charges." Herbert asked that his charges "be examined by someone outside the Army" and suggested the 3,000-page Army investigation "be made available for such examination." Herbert told Dent, in referring to the Army fact sheet, that he could literally tear the "damn thing apart with verified facts and end all doubts, if any exist, once and for all."⁴⁶

⁴⁶Ibid.

Reich also reported the Army's reaction. The Army said, according to Reich, that 333 persons had been interviewed during the seven-month investigation which ended on June 23, 1971. Herbert contended, Reich said, that the Army had failed to interview during the investigation either himself or any of the witnesses he had suggested. An Army spokesman replied that he "could not imagine" anyone suggesting that Herbert had not been interviewed.⁴⁷ The Army also challenged Herbert's assertion that he had not been allowed to bring up war crimes during his Saigon hearing for redress in April 1969. Maj. Gen. Russ, who headed the inquiry, refuted this claim, Reich said. Gen. Russ said he specifically told Herbert he could be present throughout the hearing and cross examine witnesses, but he declined. Herbert also complained to Dent about this. His letter "alleged for the first time that the transcript of the hearing was not complete." Herbert told Dent he had requested a copy of a tape recording of the proceeding which he believed would show that he tried, but failed, to raise the atrocity question. Herbert said the Army had not provided him a copy of the tape.⁴⁸

In the article, Reich called Herbert "the most-decorated

⁴⁷ See Chapter III, footnote 20

⁴⁸ Los Angeles Times, Nov. 14, 1971, 3:1

American soldier in the Korean war." Reich also pointed out that several Army officers who had been closely associated with Herbert had, in the past few days, come forward to refute Herbert's claims. "These counter charges have been branded by Herbert's chief attorney, Charles Morgan, Jr., of the American Civil Liberties Union here, as part of a 'smear campaign' against his client by the Army."⁴⁹

DECLINE IN PRESS INTEREST

The Herbert case was mentioned only one more time in 1971 by the newspapers studied. The New York Times said editorially that neither the official record of the Herbert case nor the Peers report [investigation of Mylai massacre] had yet been made public and that "both. . . would surely throw some light where light is sorely needed."⁵⁰

Following the glut of newspaper coverage which surrounded the Herbert case in November 1971, few stories about Herbert were published in 1972. On March 1, both the New York Times and the St. Louis Post-Dispatch reported his retirement. A brief, one paragraph story in the New York Times said Lt. Col. Herbert had retired. "It's been an interesting and educational career," Herbert reflected. The report said

⁴⁹Ibid.

⁵⁰New York Times, Dec. 24, 1971, 24:1

that the veteran of 22 years was "America's most decorated soldier in the Korean war."⁵¹ The AP report in the Post-Dispatch contained no Herbert quotes, but did say he was "America's most decorated soldier in the Korean war."⁵² Then on March 8, the Times reported that Herbert would begin a lecture tour to talk about improving military justice. Herbert also told the Times he was writing a book to tell what had happened to him after he accused two superior officers of condoning atrocities in Vietnam.⁵³

In June, Herbert, again identified as the most decorated enlisted man in the Korean war, announced his support for Senator McGovern for the Democratic nomination for president. He said, according to the New York Times, that the decision "to support the South Dakota Senator was his alone."⁵⁴ The last report in 1972 came in September following a meeting in a Senate hearing room "to examine the role of the military in American society." It was sponsored by former Senator Albert Gore of Tennessee."

Herbert said, when asked how he felt the Army would react if military men criticized certain members of Congress.

⁵¹New York Times, Mar. 1, 1972, 46:1

⁵²St. Louis Post-Dispatch, Mar. 1, 1972, 22A:1

⁵³New York Times, Mar. 8, 1972, 37:1

⁵⁴New York Times, June 23, 1972, 19:7. There was no mention of Herbert joining the McGovern campaign as had been reported in November 1971.

"If I wanted to speak against Senator Gore or Senator J. W. Fulbright," Herbert said, "the Army would probably encourage it, but if I wanted to tell the truth about Congressman [F. Edward] Hebert [Chairman of the House Armed Services Committee] I'd be punished."⁵⁵ The headline "Ex-Colonel Critical of Congress" was erroneous, according to a correction in the Times the next day. It pointed out that Herbert had been critical of the Army and not Congress.⁵⁶

SOLDIER REVIEWED

Of the newspapers studied, New York Times published two reviews of Lt. Col. Herbert's book, Soldier, while the Atlanta Constitution, the Washington Post, the St. Louis Post-Dispatch and the Chicago Tribune published one. The Los Angeles Times did not review the book.

Christopher Lehmann-Haupt, in his review for the New York Times, described Soldier as being something like watching World War II movies in the '40's when "the good guys are really good, the bad ones are really horrid, and the difference between them is as clear as lightning on a summer night." Lehmann-Haupt said the book "tells it so as to give a clear, if overwhelmingly favorable, impression of the kind of soldier he [Herbert] was, how he believed in the Army

⁵⁵New York Times, Sep. 15, 1972, 22:2

⁵⁶New York Times, Sep. 16, 1972, 31:7

system, but not in being an organization man." The story the book tells, according to Lehmann-Haupt "makes one's blood boil. It is told with just the right mixture of indignation, humor, bitterness, resignation and outrage. It is filled with hard facts, telling illustrations, sharply etched villains and credible heroes. . . . It is finally convincing -- or at least convincing as one man's side of the story. . . can be. And it appears to be a very damning indictment of the United States Army."⁵⁷

J. Glenn Gray, who teaches philosophy at Colorado College, also reviewed Soldier, for the New York Times. He saw Soldier as describing Herbert's own story of his long love affair with the Army "that ended sadly in Vietnam in 1969 and turned to bitter anger and recrimination." Gray recognized Herbert's "delight in front-line combat" and said it contributed to his downfall in Vietnam. Gray recalled that as a boy Herbert "loved killing wild game and that love easily transferred. . . to killing human beings." Gray said that "neither Herbert nor his superiors are vindicated by the revelations" in Soldier. He did recognize, however, that "in the present poisoned atmosphere toward all things military, most readers will not be inclined to doubt the truth of his [Herbert's] specific charges -- even if Herbert's

⁵⁷ New York Times, Jan. 30, 1973, 35:2

boastfulness in tales and exploits and his scrupulous avoidance of all atrocities of his own strain their credulity."⁵⁸

John Raymond, book review editor for the Atlanta Journal-Constitution, saw Soldier in much the same way as Christopher Lehmann-Haupt, only his good guy, bad guy analogy was cowboy movies, not World War II movies. He called Herbert "an obvious square who just doesn't seem to understand the modern way of doing things. . . ." Raymond described the relationship between the Army and Herbert as "one of the world's outstanding mutual admiration societies" who "are no longer on speaking terms." He pointed out, however, that this did not stop Herbert from talking. He said because Herbert "was upset" when he witnessed detainees being tortured, "he tried to report these incidents as being outside the rules of warfare as he had been trained to understand those rules, and instead of getting another medal, he got run off." Raymond said the various Army hearings on Herbert's dismissal "never did get down to the matter that had set them off in the first place -- the allegations of atrocities." Raymond described Herbert as "one of those rare commanders who are right in there with grunts and go

⁵⁸New York Times, Feb. 18, 1973, VII:2:1

where the action is." He said Herbert's future was assured "if he could keep his mouth shut. He couldn't. And here's [Soldier] why."⁵⁹

James A. Donovan, a former Marine colonel, reviewed Soldier for the Chicago Tribune. Donovan began by describing Herbert as an Army officer with a distinguished record who "was harassed out of the service as a consequence of charging his brigade commanding general and the deputy commander of covering up atrocities committed by United States and ARVN [Army, Republic of Vietnam] troops against Vietnamese suspects during February-March 1969." Donovan, although recognizing that Herbert's description of his war experiences -- including the alleged atrocities -- seemed "a bit overdrawn," came out more strongly for the book than other reviewers. He said:

For the reader concerned about what went wrong with our conduct of that tragic war, or for the military man interested in leadership and combat tactics, this book should be exceptionally informative. I would recommend it as a reference to West Point and the Army and Marine Corps basic officer schools.

Donovan saw "the villain" in the book (again alluding to a good guy, bad guy analogy) as Col. Franklin "who, like Herbert, is also a hard-nosed, strong-willed, and ambitious officer." He said the clash between the two officers

⁵⁹

Atlanta Constitution, Feb. 11, 1973, 10C:1

"eventually results in the demise of Herbert's distinguished career and his disenchantment with the Army." Donovan also believes that "Herbert makes a pretty convincing and documented case supporting his allegations, conduct, and decisions." Donovan ended his review with a personal endorsement of Herbert.

I met Lt. Col. Herbert shortly before he retired from the Army and have heard him talk on several occasions since then. I have been impressed by his fine military appearance, his well-informed grasp of his subjects, and his articulateness. I judge he was an above-average combat officer and leader -- a true loss to the Army.⁶⁰

R. G. Schepman, for the St. Louis Post-Dispatch, seemed to have mixed emotions about Soldier. He said his instincts tended to be on the side of Col. Herbert but then qualified it by admitting that his sympathies tended to be coy when it comes to "true believers. Especially disenchanted true believers." Schepman suggested that Herbert's ideas of taking seriously and literally the "rules against torturing prisoners and killing civilians," and about his role of wanting to be "in the grass with the troops instead of back in the airconditioning," as well as his outstanding performance, "made the brigade commander and deputy commander extremely jealous, uptight and at times downright hysterical." He added that "extraordinary men always are a psychological

⁶⁰Chicago Tribune, Book World, Feb. 18, 1973, 7:5:1

threat to mediocre men." Schepman faulted Herbert for getting "very righteous and upset over certain isolated incidents, which really are a generic attribute of any war," while never doubting "the rightness of our overall involvement" in Vietnam. He praised the writing ability of James T. Wooten, but in referring to Herbert, said a "disenchanted true believer can be a depressing sight."⁶¹

The only reviewer to outwardly reject Soldier was Peter Braestrup for the Washington Post. Braestrup said Herbert's love of the Army, his anecdotes of service life as a sergeant, his scorn for how the Army was evolved from "hard leadership to soft 'cover-your-ass'" careerism, etc., "all this rings true. But most of the book's pages devoted to Colonel Herbert's martyrdom do not, quite."

He said "the available chronology of Herbert's case already casts doubt on his zeal on the matter of war crimes." He then presented a chronology of the case to prove his point. Braestrup also criticized the media for their actions, or reactions, during the case. He suggested that Herbert "was apparently just what the media and some antiwar folk needed as their martyr-of-the-month. . . ." He also said that Herbert's stories had been "uncritically accepted by some newsmen at home in 1971." Like other reviewers,

⁶¹St. Louis Post-Dispatch, Feb. 4, 1973, 4D:7

Braestrup also saw Soldier in the traditional good guy, bad guy mold. "Herbert was the good guy. The bad guys whom he publicly accused of covering up atrocities were the two West Pointers, Major General John Barnes and Colonel J. Ross Franklin. . . ." Braestrup's comprehensive chronology of the Herbert case went beyond the period covered in Soldier to discuss the CBS-TV "Sixty Minutes" show. Braestrup's article, although billed as a review of Soldier, was in fact, a review of the Herbert case. As such, it was the most complete, comprehensive and accurate discussion of the case found in any of the newspapers studied.⁶²

"SIXTY MINUTES"

Only the New York Times of the six newspapers studied, discussed the CBS-TV show "Sixty Minutes" which, for the first time nationally, cast doubt, backed with evidence, about Lt. Col. Herbert's veracity. Peter Kihss provided a straight-forward account of the program. In his report, Kihss called Herbert "a highly decorated veteran of the Korean and Vietnam wars." (Earlier reports in the Times had called Herbert the "most decorated" enlisted man in the Korean war.)

According to the Times report, both Gen. Barnes and Col. Franklin, as well as Lt. Col. Herbert, were interviewed

⁶²Washington Post, Feb. 18, 1973, Book World, 8:1

on the program. Gen. Barnes contended that Herbert's charges must have stemmed from "a pure motive of revenge a year and a half later, to make stuff up out of whole cloth." Col. Franklin, who had before refused to comment, suggested that Herbert's contentions had been "a hoax on the American people."

After providing a two paragraph review of the Herbert case, Kihss told his readers that the "Sixty Minutes" show resulted from a year-long investigation by producer Barry Lando during which he talked to over 100 persons. Kihss then reviewed the major revelations of the 30-minute segment of the CBS television program. He discussed the confrontation between Herbert and Franklin over whether or not Franklin had been in Vietnam on Valentine's Day 1969 when Herbert claimed to have personally reported a war crime to him. Convincing evidence was provided by CBS to support Col. Franklin.⁶³

Colonel John Douglas, top military lawyer in Vietnam, also denied on the program that Lt. Col. Herbert had, as he had claimed, reported war crimes to him in Vietnam. Col. Douglas insisted that Herbert discussed only the situation of his being "improperly relieved" of his command by Gen. Barnes. Col. Lloyd Rector, assistant to Col. Douglas, made

⁶³ See discussion, Chapter II, 38

similar comments. To refute another claim by Herbert, Ken Rosenblum, a Long Island assistant district attorney who had served as a judge advocate general in the Army investigation, said he had tracked down every lead offered by Lt. Col. Herbert without being able to prove them. "Sixty Minutes" also broadcast statements by an Army radioman, Sergeant Bruce Potter, and a helicopter pilot, Mike Plantz, both of whom alleged that Lt. Col. Herbert himself committed acts of brutality in Vietnam. In yet another case, Maj. Jim Grimshaw asserted that two of three incidents Herbert had included in Soldier about him were not true.

Mike Wallace, narrator for the "Sixty Minutes" show, as did Gen. Barnes and Lt. Col. Herbert, called for the Army to release its inquiry into the case so that all the facts could be made available. Wallace also said New York Times was guilty of not reporting that Col. Franklin had passed a lie detector test after having given "big play" to the story that Herbert passed such a test. After the program, according to Kihss, Mike Wallace said the information about Franklin had been included in an "Army fact sheet, not for attribution, background" dated Jan. 10, 1972.⁶⁴

⁶⁴New York Times, Feb. 5, 1973, 12:4. The information about Col. Franklin having also passed a lie detector test was released in an Army fact sheet dated Dec. 7, 1971

The last article about Herbert published by the Atlanta Constitution came on Feb. 8, 1973. The article, by William Braden of the Chicago Sun-Times, was based on an interview conducted during a Herbert visit to Chicago to plug Soldier. According to Herbert, the Army was lying to the American people about him. Herbert contended that the Army had trained him to kill, "that was my mission." Herbert saw it as a matter of individual survival when you are face to face with the enemy. "At that particular moment," Herbert reasoned, "it's legitimate to kill a man who is in some way a threat to your life." Herbert said he had never killed a man who had lost the power to make war." After briefly discussing Herbert's philosophy regarding the legitimacy and morality of war, Braden explained that Herbert favored amnesty for draft resisters because he believed each person must decide "personally if the legitimacy of a war outweighs its immorality." In the discussion, Herbert said he knew of no atrocities committed in Korea, but that atrocities had become standard operating procedure in Vietnam. Herbert blamed this on the technicians in Vietnam who use the body count to measure success. Herbert said he believed the United States was deterred from committing atrocities in other wars because of the enemy's possible massive retaliation. He said that no such risk for the United States was involved in Vietnam.

Herbert said he went to Vietnam willingly "because I had no Daniel Ellsberg then to let me know what the truth was, and I believed the Tonkin story." Herbert said he believed President Johnson also believed the Tonkin story, but had been "hoodwinked." Braden asked Herbert why he had taken the action that he did in reporting the war crimes. "I did it," Herbert said, "because the things I saw violated everything the military had taught me. The Army taught me what I was supposed to do. If I had accepted those crimes, my previous 18 years of military duty were a complete lie."⁶⁵

GOLDWATER CONFRONTATION

The final episode in the Herbert case, as reported by the newspapers reviewed for this study, involved a confrontation between Lt. Col. Herbert and Senator Barry Goldwater (R - Ariz.) which stemmed from their meeting on the Dick Cavett television show on ABC-TV on Jan. 23, 1973. On the Cavett show, Lt. Col. Herbert claimed he had obtained "a document" which proved the Army was planning ways to remove him from the Army. Senator Goldwater offered to submit the document to a Congressional committee for investigation, if Herbert would provide it.

The first newspaper report about the document or

⁶⁵Atlanta Constitution, Feb. 8, 1973, 15B:1

documents, was published in the New York Times, and in a New York Times news service report in the St. Louis Post-Dispatch. It said the Senate Armed Services Committee had received classified documents that Lt. Col. Herbert claimed would prove "the Army was determined to oust him after he spoke out about alleged atrocities in Vietnam." Herbert contended the documents provided by "friends in the military" showed that the Army was paving the way for his discharge in the event the removal of an adverse efficiency report from his record made it possible for him to remain in the Army. The account called Herbert "one of America's most decorated Korean war veterans." The New York Times report again stated that Herbert was removed from his command "after. . . Lieut. Col. J. Ross Franklin wrote an adverse efficiency report accusing him of having 'no ambition, integrity, loyalty, or will for self-improvement'." ⁶⁶

This initial story said that although neither Senator Goldwater nor the staff of the committee had examined the documents, Goldwater's press secretary, Tony Smith, said "what we did receive was not the kind of material which Herbert told a nationwide audience he had." Lt. Col. Herbert had said on the television program that "we have obtained a

⁶⁶See Chapter III, 79, for a discussion of this aspect of Herbert's efficiency report. New York Times, Feb. 26, 1973, 15:1, and St. Louis Post-Dispatch, Feb. 26, 1973, 2C:1

document. . . signed by the Secretary of the Army, Mr. Froehlke; it's signed by [Gen.] William C. Westmoreland [then Army Chief of staff]; its signed by [Lieut.] General [Warter T.] Kerwin, among other generals, and it says in effect . . . that once the publicity dies down, we will get this guy."⁶⁷

New York Times also received a copy of the documents. The Times said the file totaled 34 pages and consisted of several documents under a referral slip dated Jan. 24, 1972, entitled "coincident retirement actions." According to the New York Times report, one document, dated Aug. 26, 1971, "suggested an alternate way to dismiss Colonel Herbert in the event that the adverse efficiency report was removed from his personnel file." The New York Times story discussed some other documents in the 34-page file.

Lt. Col. Herbert became entangled in a verbal confrontation with Senator Goldwater over the documents during an appearance by Herbert on WTTG-TV "Panorama" program in Washington, D.C. The noon news and interview show which normally runs two hours was extended 30 minutes to continue the exchange. A spokesman for WTTG said the show drew more than 600 approving phone calls praising the extension.⁶⁸

⁶⁷New York Times, Feb. 26, 1973, H6:3

⁶⁸Washington Post, Mar. 1, 1973, 15:1

According to the Washington Post, Herbert was discussing his claim of having proof that the top brass in the Army was out to get him when Senator Goldwater telephoned to remind Herbert of his promise on the Dick Cavett show (Jan. 23, 1973) to produce "a letter signed by the Secretary of the Army, the Army's Chief of Staff and other high-ranking officers designed to show 'they would get this guy'." Goldwater claimed the letter was not among the documents that Herbert had furnished the Senate Armed Services Committee. After a lengthy exchange, Herbert said, "Okay, Senator, I don't have a letter." Herbert claimed, however, that the documents he had furnished contained the same information. "Other callers during the hour included Barry Lando, a producer for CBS '60 Minutes' show which, on Feb. 4, documented several other apparent contradictions in Col. Herbert's story."⁶⁹

In April, Senator Goldwater charged that Lt. Col. Herbert had "deceived the American people" when he claimed on nationwide television that he had "a document" which proved the Army was out to destroy him. Goldwater called Herbert "a mixed up man" and concluded that Herbert's "record for truth" and accuracy" was "staggeringly bad." Goldwater said for that reason he would ask the Senate Armed Services

⁶⁹Ibid.

Committee not to investigate the documents Herbert had furnished him. Goldwater did admit that the documents did show that the Army had paved the way for Herbert's dismissal in the event he did not retire. To this, Herbert said, "that was my central contention; that's exactly what I was trying to tell him and the American people all along."⁷⁰

This exchange between Senator Goldwater and Lt. Col. Herbert proved to be the last out in the ninth inning for the Herbert case in the newspapers studied. No congressional investigation was forth coming, no additional editorials were published, and no news conferences, if held, made national news. Lt. Col. Herbert, the David in this story, had fought Goliath, and apparently lost.

⁷⁰New York Times, Apr. 8, 1973, 6:1

CHAPTER V

CONCLUSIONS

This study was undertaken to determine (1) whether or not, when compared to the best available historical standard, six selected newspapers provided factual information to the American people about alleged war crimes and their cover-up reported by Lt. Col. Herbert, and (2) whether or not the information that was provided by these newspapers was the most accurate and reliable information reasonably available. It also was intended to test the hypothesis that working newspaper reporters accepted with little question the allegations made by Lt. Col. Herbert and in many cases newspapers presented unsubstantiated allegations to the American people as fact.

Details of the war crimes reported by Lt. Col. Anthony B. Herbert, and the charges he brought against Brig. Gen. John W. Barnes and Col. J. Ross Franklin were reported between Mar. 11 and 16, 1971, as well as in a Sep. 5, 1971 feature article by James T. Wooten. Although all six newspapers reported the Herbert story during the initial period

in March, only the New York Times, the Chicago Tribune, and the St. Louis Post-Dispatch discussed the details of the war crimes allegations. The other three newspapers discussed the charges only in general terms. After that short period in March, reports of the controversy centered more on a developing confrontation between Lt. Col. Herbert and the Army than on the war crimes allegations or the cover-up.

Certainly during this first phase of the story the newspapers studied did provide the American people some information that was later determined not to be factual, yet the published information was the only information "readily" available to the newspapers. Herbert discussed seven specific war crimes with newsmen. He claimed while in Vietnam to have reported all of them to Col. Franklin and three of them to Gen. Barnes. The two officers were charged by Lt. Col. Herbert with dereliction of duty by not taking action on his reports. When investigated, however, few of the specific war crimes described by Herbert could be substantiated. Herbert made 21 allegations. Of those, 19 involved criminal acts, four of which Herbert claimed personal knowledge, while the other 15 were based on hearsay. Seven of the 19 criminal acts proved to have substance. Of those seven, two had already been investigated and action had been completed in 1968. Both resulted in courts-martial. The remaining five allegations either did not involve U.S.

personnel or were not corroborated by subsequent investigations.¹

There is no evidence that Herbert reported any of the alleged war crimes to either Gen. Barnes or to Col. Franklin as he claimed. The fact that Lt. Col. Herbert passed a lie detector test indicating that he told the truth when he claimed to have reported war crimes to Col. Franklin is countered by the fact that Col. Franklin also passed a lie test which indicated he was telling the truth when he said Herbert never reported the war crimes to him.

The newspapers during these early days of the period studied carefully attributed all allegations of war crimes and their cover-up to Lt. Col. Herbert -- the only available source of information at the time. The Army acknowledged in March 1971 that some 19 criminal allegations had been made by Herbert, but refused to discuss them or even to say what crimes had been alleged. Gen. Barnes made one statement to the effect that Herbert's allegations were, for the most part, unfounded. Col. Franklin would not comment on the charges.

In evaluating whether or not the information provided by the newspapers was the most accurate and reliable information reasonably available, the word "reasonably"

¹Undated summary sheet of Herbert case information, Office of Information, Department of the Army, Washington, D.C.

becomes all-important. During these first few days of the Herbert story there is no indication that any of the newspapers studied looked for information beyond the principals in the case -- Lt. Col. Herbert in Atlanta, Ga., Gen. Barnes in Washington, D.C., Col. Franklin in Vietnam, or Army spokesmen in Washington, D.C., or Fort McPherson, Ga. These were the "readily" available and certainly the most apparent sources, but what further action could have been "reasonably" expected of the newspapers?

It seems obvious that neither the Army, Barnes nor Franklin would have provided newsmen with additional sources of information that might have aided them in substantiating the allegations made by Herbert, but it seems just as obvious that Herbert would have gladly provided the names of involved individuals to newsmen -- as he did to Barry Lando of CBS-TV some months later. Yet there is no evidence to indicate that any newsman took advantage of this possible source of corroboration.

In September 1971, some six months after the story broke, a feature article by James T. Wooten was published that was based almost exclusively on interviews with Lt. Col. Herbert. There was little evidence that Wooten had looked beyond Herbert for information. Wooten did indicate that he had solicited comments from the Army, Barnes and Franklin, but that about summed up his balance. The article

was heavily pro-Herbert and if the reader response printed by the New York Times was a true indication, readers fell in line with Wooten's pro-Herbert reporting.

The fact that no investigative reporting was done during this early period by any reporters of the newspapers studied, lends credence to the likelihood that reporters and their editors accepted Herbert's allegations without question because they fit the news context of the period. None of the newspapers studied was spurred to action until an Army fact sheet released in November 1971 cast doubt on Herbert's allegations. None earlier took the initiative to investigate Herbert's allegations.

Although no specific proof exists, the evidence indicates that the Herbert story was accepted with little question by the press and the American people because of the context to the period. Herbert, a highly credible individual because of his background, brought charges against members of an unpopular Army who were fighting an unpopular war. He fit the image of the knight in shining armor attempting to right wrongs at any cost to himself. In addition, the charges brought by Herbert came on the heels of Mylai, which established that war crimes had been committed in Vietnam. Mylai investigations also indicated that senior Army officials may have been guilty of misbehavior in Vietnam. Charges brought by Herbert, then, must have seemed

to fit the accepted norm for the time.

Was the information printed by the six newspapers during the first few days of the story the most accurate and reliable "reasonably available?" For those newspapers with a limited staff [The St. Louis Post-Dispatch said it simply could not provide additional people to the story.],² perhaps the information printed was the most accurate and reliable information reasonably available, but for those with a more extensive, world-wide news organization, the judgment becomes more questionable. It seems reasonable to have expected a newspaper with adequate facilities and manpower to have made more of an effort than it did to look beyond the obvious -- the expected norm of the times -- to question even the modern day Horatio Alger who had pulled himself up through the ranks and had dedicated his life to the Army he was attacking.

A contributing factor to this situation can be traced to a fetish for speed. It is an accepted fact that news agencies, including the newspapers which reported the Herbert story, strive to be first with the best information they have available, rather than delay a report for more complete, and perhaps more accurate, information -- especially

²Evarts A. Graham, Jr., managing editor, St. Louis Post-Dispatch, letter, Mar. 11, 1974.

if such action might result in having lost a "beat."

The shortcomings in which this desire to be first manifests itself is likely to be a part of reporting for the foreseeable future. Competition among the news agencies continues to demand this action, or reaction, and the American people have learned to expect it.

As the Herbert case progressed, some of the newspapers became careless in reporting precise factual information. Also, allegations that had earlier been carefully attributed to Herbert, were later presented as factual information, without attribution. Attributions and modifiers tended to wash out as the story developed.

The New York Times published more than twice as many stories about the Herbert case as any other newspaper studied (see appendix A). It also published more erroneous information than any other newspaper studied. James T. Wooten's feature article, alone, which was published in the New York Times Magazine, as well as by the Chicago Tribune and the St. Louis Post-Dispatch, contained four errors in fact. Wooten said Herbert was abruptly relieved of his command, when he had actually been repeatedly warned by his superior officers that he would be relieved if he did not change. Wooten also either incorrectly read Herbert's efficiency report or mistakenly took someone else's word for what the report said because the information he printed about the efficiency report

contained several errors in fact. In both cases, the erroneous information made it appear that the actions taken by Gen. Barnes and Col. Franklin against Herbert were more severe than they actually had been. It also was consistent with a clearly black and white, bad-guy, good-guy characterization, much the same as was later developed by Wooten in Soldier. Wooten was also careless in the feature article in repeating previously reported information. Even though the New York Times had already published the information correctly, Wooten said charges had been filed by Herbert against Barnes and Franklin on Mar. 12, 1971 and that the charges included "misprison (concealment) of a felony." In reality, the charges were filed on Mar. 15, 1971 and did not include the concealment of a felony charge. The Times committed the same error about the concealment charge again on Sep. 8, 1971.

On Oct. 9, 1971, New York Times reported that Gen. Barnes and Col. Franklin had each ignored eight criminal charges and that the decision to fire Herbert had been based on an adverse efficiency report that had been written by Col. Franklin. In fact, Gen. Barnes was charged with having failed to act on three alleged crimes and Franklin for failing to act on seven. Also, the efficiency report on Herbert came as a result of his relief from command, not vice versa. This same error was repeated in the Times on Feb. 26, 1973.

The St. Louis Post-Dispatch seemed to follow the editorial lead of the New York Times. It stated as fact on Oct. 17, 1971 that Herbert had been given a bad efficiency report and was relieved of his command in Vietnam after reporting the torture and killing of Vietnamese civilians. These allegations were not proved. The Post-Dispatch had earlier erroneously reported that Herbert had been inspector general when the alleged atrocities occurred, when in reality, he had been Commanding Officer, 2d Battalion, when most of the alleged atrocities occurred.

On October 16, a New York Times article stated that the damaging efficiency report written by Barnes and Franklin had been added to Herbert's file soon after Herbert made public his plans to file charges against them. This error was particularly serious because of the erroneous, vindictive action it implied. Actually the efficiency report was made a part of Herbert's file soon after his relief from command in April 1969, some 23 months before he publicly announced plans to charge his superior officers with having covered up war crimes.

On Nov. 3, 1971, when it was reported that Herbert's promotion had been approved, a New York Times article erroneously stated that Herbert would be promoted to full colonel on October 20. The promotion was not from temporary lieutenant colonel to colonel as the Times reported, but from

permanent captain (regular Army) to permanent major, as all other newspapers studied correctly reported. A similar error was printed by the New York Times on Nov. 8, 1971 when it said Herbert would receive the retirement pay of a major, when in reality, he retired as a lieutenant colonel, the highest rank he had satisfactorily held.

The New York Times, as well as all other newspapers reported throughout the period studied that Herbert was the most decorated enlisted man in the Korean War. The Army contends that no such determination has ever been made. It is not possible to determine whether or not the reports carried by both AP and UPI and also by the other newspapers, stemmed from the New York Times report or not, but the New York Times report on Mar. 11, 1971 was the first to publish this statement.

Editorially, the New York Times said on Sep. 5, 1971, for the first time without attribution, that Herbert reported atrocities to Gen. Barnes and Col. Franklin and was told not to meddle. When Herbert persisted, he was made victim of a fraudulent efficiency report, the New York Times asserted. The evidence developed by Army investigators does not substantiate these statements. When this editorial was published, charges of cover-up had already been dropped against Col. Franklin and the charges against Gen. Barnes remained as only allegations, yet the New York Times published the unsub-

stantiated information as fact, without indication there was a doubt. Obviously, the word of Lt. Col. Herbert had been accepted rather than the findings of a team of Army investigators which had already cleared Col. Franklin of cover-up charges. As the New York Times said on Oct. 10, 1971: "His [Herbert's] record both as the Army's most decorated enlisted man in Korea and as a combat commander in Vietnam gives extraordinary weight to the charges leveled by him against members of the Army to which he was devoted."³ For the New York Times, this weight obviously tipped the scales in his direction.

Both the UPI and AP reported without attribution in two separate stories in October that Herbert had reported the atrocities as he had claimed. The information was contained in the background portion of the story and seemed to have been carried forward almost intact from earlier stories. This, in addition to the errors Wooten made in carrying forward information from earlier reports, questions the morgue system commonly used by newspapers in providing background information. Errors tend to compound themselves.

Bob Cromie, in his Chicago Tribune column, also provided his readers some information that was not factual.

³New York Times, Oct. 10, 1971, IV:14:2.

He said on Sep. 8, 1971 that Herbert was being thrown out of the Army because he had reported war crimes to a colonel in Vietnam and later filed charges against the colonel when the latter did nothing about the crimes. The colonel, according to Cromie, rather than taking any action, told Herbert to look the other way. There is simply no evidence to indicate that these assertions are true -- there is only Herbert's allegations that they are true. We know, for example, that Herbert voluntarily retired from the Army -- not legally required to retire as implied by Cromie -- and there is no evidence to indicate Herbert ever reported any war crimes to "the colonel." In the same article, Cromie also told about the pressure Maj. Carl E. Hensley had been under before he committed suicide while investigating Herbert's allegations. The only other reference found of this "pressure" was in a New York Times story, and that was attributed to Herbert. Cromie provided no attribution.

On Oct. 8, 1971, Cromie told his readers that charges had been dropped against Franklin even though the Army's Criminal Investigative Division had verified their accuracy. He again confused the facts. CID determined that some of the war crimes reported by Herbert did have a basis in fact, but Franklin was not charged with having committed war crimes -- only in having covered them up -- and no evidence

was developed that indicated he had even done that.

In a Nov. 6, 1971 column, Cromie repeated another Herbert allegation as fact. Cromie said the Army had given Herbert permission to appear on the November 2 "Dick Cavett Show" only five minutes before the show was to be taped in a studio on the other side of Atlanta. Several Army officers who were involved in the episode declared that the permission had been given one hour before the show, not five minutes, but wasn't actually picked up by Herbert until five minutes before the taping was to begin. Cromie elected to print the minority opinion as fact, not the majority, and then did not indicate there was any question whether or not the information was factual.

The Washington Post had a minor factual error in its Oct. 9, 1971 report when it said the Herbert efficiency report ordered removed by the Secretary of the Army was the only one ever filed against Herbert. This ignored the fact that Herbert was in trouble while in the Green Berets, had received a bad efficiency report, but that one had also later been removed from his record. George Crile of the Star-News, Pasadena, Calif., revealed that information on Nov. 28, 1971.

It is clear that there was information presented to the American people about the Herbert case that was not factual. Yet the really relevant aspect is whether or not the information that was published was the most accurate and reliable readily available to the press.

As the Herbert story evolved into a confrontation with the Army, Herbert and his lawyers remained as the main source of information. There is an indication that the Army did respond to certain Herbert charges of harassment, but did not make any announcements or press releases which refuted Herbert's charges. The Army claimed that it is not in the business of refuting every charge made against it. Spokesmen normally respond only when queried. The often reported claim that Herbert was the "most decorated" in the Korean war is an example. The Army's response was to inform reporters, if queried, that no such determination had ever been made.⁴ The Army did not include the information in any press release or fact sheet.

Herbert operated with no such constraints and the newspapers cooperated by providing him with coverage each time he had something to say. This is not to say the newspapers would not have also provided the same space for Army statements if ones had been made. Herbert's allegations were considered newsworthy by most newspapers throughout the period. It appears that some newspapers may have been negligent in some cases by not asking the Army for comment. It is also possible that early "no comment" reactions from the Army may have discouraged newsmen from asking. Ms.

⁴CINFO Form 74, 15 Apr 72 (Revised), dated Apr. 2, 1974.

Millie Burkhart, an information officer at Fort McPherson, Ga., when the Herbert story broke, recalled that many newsmen came to the base to interview Herbert and then left without even asking for an Army statement that might have explained the Army's side of the story.⁵ The Army was faced with the problem of investigating Herbert's allegations and also protecting the rights of the accused. For that reason, Army spokesmen, as well as Gen. Barnes and Col. Franklin, refused to discuss the allegations made by Herbert.

Perhaps the Army could have been more responsive and still protected the rights of the individuals involved in the case. In March 1971, the then valid policy prescribed for the Department of Justice by the Attorney General relative to the release of information relating to criminal proceedings allowed the release of (1) background information on defendants such as name, age, residence, employment and marital status, (2) substance or text of the charges, such as a complaint, indictment or information, and (3) identity of the investigating agency and the length of the investigation.⁶

Under these guidelines, which were valid until amended

⁵Telephone interview by E. A. Sharp with Ms. Millie Burkhart, Aug. 24, 1973.

⁶Harold L. Nelson, and Dwight L. Teeter, Jr., Law and Mass Communications (Mineola, N.Y., 1973), 282-284.

in November 1971, it appears the Army at least could have provided the American people some information about the 21 allegations made by Herbert. Only the seven discussed by Herbert were reported. For the Army to have gone further than that might have been considered prejudicial.

Certainly the Army was correct in not releasing the fact that Col. Franklin had on May 21, 1971⁷ passed a lie detector test which indicated he was telling the truth when he said Lt. Col. Herbert did not report war crimes to him. To have released this information before the charges were dropped against Col. Franklin in July 1971 would have been prejudicial. The Army released the information in a Dec. 7, 1971 fact sheet -- later, perhaps, than was necessary under the circumstances.

Lawyers for Lt. Col. Herbert, in releasing the results of the lie test passed by Herbert, could certainly have been prejudicial to Gen. Barnes whose charges were still under investigation when the news was released in September 1971. Other specific Herbert accusations about Franklin and Barnes that were published by newspapers could also have been prejudicial if the charges had resulted in courts-martial.

The New York Times, also ignored the rights of the accused in its Sept. 5, 1971 editorial when it said "justice

⁷CINFO Form 74, op. cit.

for Colonel Herbert is an essential element in the case" and then went on to state as fact the unsubstantiated statement that Herbert had reported the war crimes as he claimed and had been told "not to meddle."⁸ The St. Louis Post-Dispatch and Bob Cromie in the Chicago Tribune did much the same thing when they too assumed the guilt of Gen. Barnes and Col. Franklin.

The New York Times repeated its one-sided view of justice on Oct. 7, 1971 when it said "elementary justice requires that attention be given first to the protection of Colonel Herbert's rights as man and soldier."⁹ The editorial ignored the rights of the accused -- Col. Franklin who had already been cleared of charges against him, but remained accused by the Times, and Gen. Barnes, who was still under investigation by the Army.

For the most part, the newspapers studied provided full and factual information about the Herbert case. The following is a short evaluation of the coverage provided by each newspaper.

CHICAGO TRIBUNE

Chicago Tribune staff writer Fred Farrar was first to

⁸New York Times, Sep. 5, 1971, IV:10:2

⁹New York Times, Oct. 7, 1971, 49:2

interview Lt. Col. Herbert and print his allegations. The Tribune carried Farrar's report with a front page banner headline on Mar. 11, 1971. From that day through Feb. 18, 1973, 10 news stories plus a review of Soldier, 4 letters to the editor and 2 columns by Bob Cromie were published. Five of the news stories carried Farrar's by-line.

Farrar was careful to attribute unsubstantiated claims to Lt. Col. Herbert. Cromie, however, while expressing his opinion, published some unsubstantiated allegations as fact. The Tribune did not publish any editorials.

Although the Tribune covered most aspects of the case, it failed to report that:

1. Col. Franklin passed a lie detector test (U.S. Army Fact Sheet, Dec. 7, 1971).
2. Charges dropped against Gen. Barnes (Oct. 16, 1971).
3. Results of Army investigations (U.S. Army Fact Sheet, Nov. 5, 1971).
4. Investigative reporting of CBS-TV "Sixty Minutes" (aired Feb. 4, 1973).

The Herbert feature article by James T. Wooten, which was published in the magazine section of the Tribune on Sep. 5, 1971, was effectively edited by the Tribune staff to take out some gratuitous descriptive passages about Herbert.

NEW YORK TIMES

During the period Mar. 11, 1971 through Apr. 8, 1973, 35 news stories, 5 letters to the editor and 6 editorials about the Herbert case were published by the New York Times.

Seven of the 35 news stories carried a by-line by James T. Wooten. The articles written by Wooten, because of his liberal use of descriptive adjectives, and sometimes biased writing, were generally pro-Herbert even though in each case there is an indication in the printed report that Wooten had made some attempt to either elicit a comment from a U.S. Army spokesman or from principals involved.

Wooten Sep. 5, 1971 New York Times Magazine article was slanted, even though brief comments attributed to Gen. Barnes, Col. Franklin and the Army were included. The feature also contained several errors in fact, as already discussed. Other errors in fact which appeared in the Times were in staff-prepared articles or in editorials.

New York Times reported the Herbert case in great detail, publishing more than twice as many articles as any other newspaper studied. From the time the story broke on Mar. 11, 1971, for example, until the Army released its first fact sheet on the case following completion of its investigation into the charges brought by Herbert, New York Times published 19 news stories (four under Wooten's by-line), four pro-Herbert editorials and five pro-Herbert

letters to the editor. The only significant fact that was not reported by the Times was that Col. Franklin passed a lie detector test the same as Col. Herbert had done earlier. This fact was buried in a U.S. Army Fact Sheet dated Dec. 7, 1971 that was made available to those newsmen who asked for it.

In February 1973, New York Times did report the investigative reporting of Mike Wallace and Barry Lando for CBS-TV "Sixty Minutes" show which was aired on Feb. 4, 1973. No other newspaper in this study carried such a report. In this story, the Times neither reversed its earlier editorial position nor reiterated its earlier pro-Herbert position. Interestingly, neither AP nor UPI carried a report of "Sixty Minutes." Time magazine called it a "strange omission." AP said the story did not justify the space that a full background explanation would have taken, while UPI editors could not recall having received advance notice of the show. CBS claims they staged a press screening of the show and also delivered broadcast transcripts to major New York City news outlets.¹⁰

ST. LOUIS POST-DISPATCH

During the period Mar. 12, 1971, through Feb. 26, 1973, the St. Louis Post-Dispatch published 18 news stories, two

¹⁰Time magazine, Feb. 19, 1973, Vol. 101, NO. 8, 78

editorials and one editorial cartoon about the Herbert case. The Post-Dispatch relied almost exclusively on the wire services or the New York Times News Service for its coverage.

Although most aspects of the case were reported, research indicates that the Post-Dispatch did not report:

1. Results of Army investigations of the Herbert case (U.S. Army Fact Sheet, Nov. 5, 1971).
2. Fact that Col. Franklin passed a lie detector test (U.S. Army Fact Sheet, Dec. 7, 1971).
3. Investigative reporting of Barry Lando and Mike Wallace for "Sixty Minutes" (aired on CBS-TV, Feb. 4, 1973).

The Post-Dispatch seemed to follow the lead of the New York Times. It took a similar editorial position and published numerous news stories from the New York Times News Service. The overall news coverage of the Herbert case by the Post-Dispatch seemed to be one of not becoming involved in the story, even though the editor chose to take an editorial position, apparently based on reports either from the wires or New York Times. The Post-Dispatch never assigned their own reporter to the story.

WASHINGTON POST

During the period Mar. 12, 1971 through Mar. 1, 1974, 19 news stories about the Herbert case were published in the Washington Post. The Post did not take an editorial position and did not publish any letters to the editor about the case.

The coverage provided by the Post reported most major aspects of the case. Until October 1971, when three by-lined reports by Michael Getler and Peter Braestrup were published, the Post relied on the wire services for most reports. Peter Braestrup later also reviewed Soldier. That review was the most thorough and factual report on the Herbert case found in any newspaper. The coverage provided by the Post was balanced. Each report indicated at least some attempt to tell both sides of the story.

Research indicates the Post did, however, fail to report:

1. Results of Army investigation (U.S. Army Fact Sheet, Nov. 5, 1971).
2. Fact that Col. Franklin passed a lie detector test (U.S. Army Fact Sheet, Dec. 7, 1971).
3. Results of Barry Lando's investigative reporting for the CBS-TV "Sixty Minutes" program (aired on Feb. 4, 1973).

LOS ANGELES TIMES

During the period, Mar. 12, 1971 through Nov. 14, 1971, the Los Angeles Times published 16 news stories related to the Lt. Col. Herbert case. The Times did not take an editorial position and did not publish any letters to the editor about the case.

Initial coverage of the story was an AP story on Mar.

12, 1971 which indicated Lt. Col. Herbert would file charges. This was followed by a by-lined article by Kenneth Reich on Mar. 16, 1971. From that point until the Army released its first fact sheet on the case, the Times used mainly AP reports of significant aspects of the case.

During the 10-day period Nov. 4-10, 1971, the Times carried nine separate stories about the case. Three of the reports were by Reich. His story on Nov. 6, 1971, was an example of excellent, thorough investigative reporting. He took information provided in an Army fact sheet and added information from both Lt. Col. Herbert and additional sources before publishing his report. He demonstrated professional competence and provided the most balanced report that had been published in any of the newspapers studied up to that time. Reich looked on both sides of the case to provide balance.

The Times failed to report the following aspects of the Herbert case:

1. Herbert passed a lie detector test (Sep. 8, 1971).
2. Franklin passed a lie detector test (U.S. Army fact sheet, Dec. 7, 1971).
3. Results of investigative reporting for "Sixty Minutes" show (aired on CBS-TV, Feb. 4, 1973).
4. Book review of Soldier (February 1973).

The Times provided its readers with a balanced view of the Herbert case, and did not report information that had not yet been substantiated. When both sides of the story became available in November 1971, the Times provided its readers a thorough and balanced presentation.

ATLANTA CONSTITUTION

During the period Mar. 13, 1971 through Feb. 11, 1973, the Constitution published 17 news stories about the Herbert case. The Constitution did not take an editorial position and did not publish any letters to the editor.

The Constitution reported most of the major aspects of the case. It did not, however, report that:

1. Charges against Col. Franklin had been dropped (Jul. 22, 1971).

2. Franklin passed a lie detector test (U.S. Army Fact Sheet, Dec. 7, 1971).

3. Results of the CBS-TV "Sixty Minutes" program (aired on Feb. 4, 1973).

The Constitution's coverage increased in intensity in early November 1971 when five by-lined articles were printed in nine days. The coverage during that period was more balanced than earlier reports had been and put the story into perspective for its readers. If anything, the stories in November leaned slightly toward the Army side of the

controversy. Phil Gailey's articles in November reflected sound reporting.

RESPONSIBILITY

Generally, it appears that the Army could have released some additional information. It is also recognized, however, that the Army's efforts were to protect the rights of the accused. If the Army erred, it was on the side of over protecting the rights of the individuals. The Army took this position even though it undoubtedly cast additional shadows of doubt on a reputation already tarnished by the Vietnam war. The Army should be commended for not allowing its lack of popularity to prompt an error in reverse. Following the Mylai trials, a reaction directed at obtaining more popular public support might have seemed a more palatable decision.

The newspapers on the other hand, had the responsibility of informing the American people about what appeared to be additional atrocities in Vietnam. This was newsworthy and certainly newspapers would have been negligent if they had not reported the charges brought by Herbert. The newspapers were, however, derelict because they did not look beyond the one voice for substantiation. Even in the months following the initial accusations, no serious investigative reporting was accomplished by any of the newspapers studied. Several did respond with a more balanced effort after the

Army provided a clue that perhaps all was not as Herbert claimed.

Certainly the New York Times, the Chicago Tribune (Bob Cromie), and the St. Louis Post-Dispatch were negligent in not assuming the innocence of Gen. Barnes and Col. Franklin rather than their guilt. These three newspapers assumed the guilt of these officers, as well as the guilt of the Army for not making the same assumption. This type of reporting is not objective and does not build the "good faith with the reader" required by the ASNE code of ethics. There is also considerable evidence that the New York Times in its overall coverage of the Herbert story, the St. Louis Post-Dispatch in its editorial position and Bob Cromie in one of his Tribune columns, are guilty of "lack of thoroughness or accuracy within its control" by not being more careful what they presented as fact to their readers. Far too many Americans swear "I know it's true because I saw it in the newspaper" to allow the reporting of information based on shallow evidence to be presented as fact without warranted qualifications. Also the pro-Herbert stance assumed by James T. Wooten might also question his professional judgment to make a "clear distinction between news reports and expressions of opinion" as required by the Sigma Delta Chi code of ethics.

The Army is vulnerable to criticism, however, for not releasing investigative information after the fact. The American people suffered much from this experience in Vietnam. War crimes and misbehavior by some American fighting men seemed to have become almost the accepted norm. It appears only just that the American people should be told the whole and documented truth about the allegations made by Lt. Col. Herbert. The information made available for this thesis leaves no doubt in this author's mind that the findings were as indicated in the material furnished by the U.S. Army. However, until the information is made public for third persons to evaluate and judge for themselves, this thesis or any other studies done will not fully satisfy the inquisitive minds of those who continually search for truth.

RECOMMENDATIONS FOR FURTHER STUDY

This study has only scratched the surface of the Herbert case. Numerous magazine articles have been written about Lt. Col. Herbert and his allegations. A parallel study of his claims would be instructive. Did the magazines become as involved in the Herbert case as some newspapers studied for this thesis? And if so, how did the response compare to newspapers?

Television played a significant part in the Herbert

story, yet has not been touched in this study. Although it was a feature article by James T. Wooten which appeared in newspapers across the country that first made Herbert known throughout the country and probably prompted his invitation to "The Dick Cavett Show," it was the Cavett show itself which gave Herbert the opportunity to sell himself nationally and implant his hero image in the minds of millions. Ironically Herbert's downfall also came on television. On Feb. 4, 1973, in 30 minutes of the "Sixty Minutes" show on CBS-TV, Mike Wallace actually stripped this Army veteran's story in full view of the American public. A story of the part television played in making and breaking the Herbert story would help demonstrate the power of this relatively new communication medium.

More can also be done with newspapers. This study has concentrated only on six metropolitan newspapers. None of the newspapers studied did any serious investigative reporting for several months after the story broke. Several newspapers, however, backed off the Herbert story early and went to work to look more carefully at Herbert's claims. Paul Dean of the Arizona Republic (Phoenix), George Crile of the Star-News in Pasadena, Calif., and S.L.A. Marshall of the Times-Post News Service questioned Herbert's allegations and wrote about them. It would be instructive to see what reporters and what newspapers questioned Herbert and in what

they did about it. To compare the information derived from such a study with the findings in this study would provide an insight into investigative reporting. Did the metropolitan newspapers become too much involved in the case or too little, or perhaps did they depend too much on what the public wanted to read or too much on what they thought the public wanted to read?

One last aspect of the Herbert case that would add another prospective to this study would be Herbert's lecture tour to college campuses in 1972. His talks to university students were well covered by the campus press. The statements and reports as discussed with students, when compared to the historical standard used for this study, would also add an important dimension to the Herbert story and the way it was reported.

CHAPTER VI

EPILOGUE

At the beginning of this study, letters were written to the managing editor of each of the newspapers being studied in an attempt to gain an insight into the coverage of the Herbert story that might not have been otherwise apparent in researching the newspapers themselves. The letter asked for information that would shed some light on the metaphysical "why" question. Some responses did provide this kind of information.

Replies were received from four of the six newspapers. Only the Los Angeles Times and the Chicago Tribune did not reply. The responses ranged from a brief three paragraph letter from Jim Minter, managing editor of the Atlanta Constitution, to a lengthy three page reply from Michael Getler of the Washington Post. Only the managing editor, St. Louis Post-Dispatch, argued with the precept of this study.

Jim Minter was frank in admitting that there had been "obvious gaps" in Herbert's story that should have been checked out from the beginning and that Lt. Col. Herbert

"apparently had a lot to say" while at Fort McPherson and found at least one Constitution reporter "happy to quote him." Minter also added, however, that as he recalled, the Army "was not overly cooperative" during that same period.¹

Evarts A. Graham, Jr., managing editor of the St. Louis Post-Dispatch was most helpful in pointing out several articles and editorials that had initially been overlooked in the research for this study. This was instrumental in making the study more complete and accurate.

Graham agreed with the findings of this study that the Post-Dispatch had relied almost exclusively on either the New York Times or wire services for material published. He said that was normal for material not derived from local sources and added that the Herbert story was never a page one story for the Post-Dispatch. He said the newspaper's Washington Bureau was small and could not "make extensive investigations of every news story."

The Post-Dispatch's managing editor did not agree, however, that the allegations made by Lt. Col. Herbert had yet been proven to be untrue. He says that fact "is still in dispute," and suggested that the evidence to support such a belief "is not yet in." He also believes "the Army was grossly derelict in failing to make public its side of the

¹Jim Minter, managing editor, Atlanta Constitution letter, Mar. 18, 1974 (See appendix C).

case until much later." He said the greatest lesson the Herbert case furnished was "the Army's need to react more quickly in making public whatever information it has." Graham reasoned that no news organization could wait "for bureaucratic wheels to turn indefinitely before publishing what it has."²

Michael Getler, who, together with Peter Braestrup, wrote several articles about the Herbert case for the Washington Post, provided some interesting background of the coverage provided by that newspaper. Getler said reporters attempting to cover the Herbert story had "considerable difficulty" in trying to find out if there was an Army side to the controversy because of the Army's refusal to comment for several months.

Getler also recognized that Herbert was a "compelling figure, unquestionably one helluva soldier and, on the heels of My Lai," was a tough story to ignore -- ". . . indeed it would have been irresponsible to have ignored it." Getler said the Post recognized both the seriousness of the charges brought against Brig. Gen. John W. Barnes and Col. J. Ross Franklin, as well as Herbert's character, and was faced with the problem of catching the drama of Herbert, yet exercising

²Evarts A. Graham, Jr., managing editor, St. Louis Post-Dispatch, letter, Mar. 11, 1974 (See Appendix D).

the prudence and caution the story required. Getler said that because there were two other officers facing legal charges, the Herbert story "demanded care and thoroughness."

The Washington Post did look closely at the Herbert case at the very outset. Soon after the story broke, according to Getler, the Post asked staffer Peter Braestrup, an experienced combat reporter who was already in Atlanta covering the Mylai courts-martial, "to look into the Herbert case just for guidance purposes." After a three-hour interview with Herbert, Braestrup had "doubts about Herbert and parts of his story" and recommended that the Post exercise caution in handling the story. Getler said the advice was "generally followed" and added that in hindsight, he believed it was good advice. (This seems to be exactly opposite from the position taken by James T. Wooten and the New York Times.)

Getler sees the Herbert case as one which reaffirms journalist's requirement to be skeptical and probing. He credited CBS with "superb" investigative work and believes the "other side" of the Herbert case might not have otherwise been told. Getler said few news operations have either the time or the people to spend on the kind of investigation conducted by CBS, "especially when the person being checked on appears to be a martyr." Both Getler and Braestrup believe, however, that the New York Times should have undertaken such

an investigation "after having made such a large investment in presenting Herbert's case and in effect, making him a national figure."³

George Palmer, assistant to the managing editor of the New York Times, said his paper treated the Herbert case the same way it treats all news developments. The Times reported the Herbert case on its news merits when it figured prominently in the news "and tried to report all the information available to us as the news fell," Palmer said.

Palmer said the news department took the "normal and routine steps" to obtain additional information and balancing comment, and added that the Pentagon would not officially comment on Herbert's charges. As soon as Herbert made his charges, according to Palmer, the Times foreign news department asked the Times Saigon bureau to contact Col. Franklin for comment. "When one of our staff correspondents in Saigon contacted Colonel Franklin's unit by telephone, he first was told that Colonel Franklin was sick." The correspondent finally got Col. Franklin on the phone after repeated calls, but Col. Franklin would not comment on the story.⁴ Palmer did not comment further on the coverage the Times provided.

³Michael Getler, Washington Post, letter, March 27, 1974 (See Appendix E)

⁴George Palmer, assistant to the managing editor, New York Times, letter, Mar. 25, 1974 (See Appendix F).

James T. Wooten, in another study, did add some additional information to that provided by Palmer. Wooten told Lee Ewing that he had attempted to check Herbert's claims in March 1971. Wooten confirmed that Col. Franklin was sought out, and said he also tried to contact Gen. Barnes for comment. Wooten said that checking out Herbert's claim that he had reported crimes in Vietnam was "rather impossible." Wooten also confirmed that Herbert had been the prime source for his Sep. 5, 1971 feature article. Wooten said he still stands by what he wrote, but said if there were errors in fact, he wanted "quickly to concede the errors." Wooten said he still believes "that Tony Herbert is telling the truth about what happened to him and the United States Army in Vietnam."⁵

The newspaper executives were unanimous in their criticism of the Army for not having been more responsive in providing information about the Herbert case. None, however, touched on just what else the Army could have done, and only Micheal Getler of the Washington Post even mentioned how additional information might have affected the rights of the accused. The New York Times staunchly defended its position, while the Atlanta Constitution implied that its

⁵Lee Ewing, "Col. Anthony Herbert: the unmaking of an accuser," Columbia Journalism Review, Vol. XII, No. 3, Sept./Oct., 1973, 13.

coverage might have initially been unbalanced in favor of Herbert. The St. Louis Post-Dispatch, while agreeing that they had not really become involved in the case, did also admit to having taken an editorial position.

LT. COL. HERBERT

Although this study has centered on the Herbert case as it involved Herbert's allegations of war crimes and their cover-up, it has not included what may be the final chapter of the Herbert story.

In late October 1973, Col. Franklin, together with Col. John J. Douglas, the military lawyer in Saigon to whom Herbert claimed to have reported war crimes, filed a joint libel suit against Herbert for 3-1/2 million dollars. Col. Franklin is seeking \$3 million in damages and Col. Douglas is seeking \$500,000. Also named as co-defendants with Herbert in the suits are James T. Wooten, now a staff writer for the Philadelphia Inquirer, who collaborated with Herbert on Soldier, and the Holt Rinehart firm, publisher of Soldier.

Franklin claimed that in 333 of Soldier's 493 pages, the "dominant theme is falsely to impute" to Franklin "criminal conducts, namely obstruction of justice by covering up war crimes such as murder and torture and professional incompetence."

Douglas claims that a passage in Soldier was clearly intended, first, to portray him as someone who generally condones war crime even though he was charged with the responsibility to prosecute war criminals and, secondly, to imply that he violated his professional and legal obligations by refusing to take action when presented substantial evidence because of the possible repercussions against himself if he had done so. Both officers said in the suit that the implications and charges against them as stated in Soldier were false and were published with malice.⁶

Both Col. Franklin and Col. Douglas were interviewed on the CBS-TV "Sixty Minutes" show which attacked Herbert's story. Herbert claims CBS libeled him on the program, and in January this year, filed a \$44 million libel suit against the Columbia Broadcasting System, producer of "Sixty Minutes," Barry Lando, and the show's narrator, Mike Wallace, as well as The Atlantic Monthly magazine in which Lando discussed his investigation for "Sixty Minutes." Herbert said the program and the magazine article falsely and maliciously portrayed him as a liar.⁷ Neither case has yet been adjudicated.

⁶The Montgomery Journal (Maryland), Nov. 1, 1973, 1:1

⁷Wisconsin State Journal, Jan. 27, 1974.

The only other item found in the national press about Lt. Col. Herbert was on Feb. 22, 1974. The report said a Federal Bureau of Investigation spokesman confirmed that Herbert was under investigation on charges of having impersonated a federal officer. It was alleged that Herbert identified himself in Cranbury Township, N.J., as an Army CID agent assigned to check gasoline prices for the Internal Revenue Service. It was further alleged that Herbert used his identity to obtain gasoline at the station.⁸ Charges against Herbert were never pressed.

The Lt. Col. Herbert story is certain to be recorded in history as one of the tragedies of the war in Vietnam. Certainly his career until 1969 appeared to be an up-from-the-ranks, private-to-general success story. For whatever reason, to see such a career end the way it did is tragic. In Herbert's case, the mass media created and then killed the image of a supersoldier.

⁸Army Times, Feb. 20, 1974, 20 (Also appeared in New York Times, Feb. 22, 1974).

APPENDIX A

CHRONOLOGY OF NEWSPAPER COVERAGE

CHRONOLOGY OF NEWSPAPER COVERAGECODE

- 1 -- Los Angeles Times
- 2 -- St. Louis Post-Dispatch
- 3 -- Washington Post
- 4 -- Atlanta Constitution
- 5 -- Chicago Tribune
- 6 -- New York Times
- A -- Contains Army comment or indicates attempt made to
get one.
- B -- Contains Gen. Barnes comment or indicates attempt made
to get one.
- F -- Contains Col. Franklin comment or indicates attempt
made to get one.
- H -- Contains Lt. Col. Herbert comment or indicates attempt
made to get one.
- S -- Based on sources.
- X -- Does NOT contain comments from any of the principals
involved.

CHRONOLOGY OF NEWSPAPER COVERAGE

DATE	SUBJECT	NEWSPAPERS					
		1	2	3	4	5	6
<u>1971</u>							
Mar 11	Herbert to file charges				A H	S	
Mar 12	Herbert to file charges	A H	H	A H	H	B F H	
Mar 13	Herbert to file charges			H	A H	B F H	
Mar 14	Herbert to file charges				B F H	H	
Mar 16	Herbert files charges	B H	B F H	B F H	H	B F H	
Apr 22	Barnes, Franklin, Herbert Records flagged				A		
May 2	Franklin receives medal		A				
Jun 3	Herbert threatened by Army Investigator	A H		H		A H	
Jun 6	Barnes promoted					A H	
Jul 3	Herbert interview on British television			H			
Jul 22	Franklin charges dropped	A	A	A	A H	A	
Aug 1	Herbert claims harassment			A H			
Sep 2	Herbert transferred		A H		A H	H	A H

CHRONOLOGY (CONTINUED)

DATE	SUBJECT	NEWSPAPERS					
		1	2	3	4	5	6
Sep 3	Herbert transferred			A H			
Sep 3	Wooten feature on Herbert		A B F H	A H	A H	A B F H	
Sep 5	Editorial (pro-Herbert)					X	
Sep 8	Herbert passes lie test		H	H	H	H	
Sep 8	Bob Cromie column				X		
Sep 11	Letters to the Editor. (three)				X		
Sep 14	Letter to the Editor				X		
Sep 15	American Jewish Congress Re Herbert						X
Sep 20	Letter to the Editor						X
Sep 26	Letters to the Editor (four)						X
Oct 4	Secretary of the Army To review Herbert record	A H		A H	A H	A H	
Oct 7	Editorial (pro-Herbert)						X
Oct 9	Secretary of the Army Removes bad efficiency Report	A H	A H	A H	A H	A	
Oct 10	Editorial (pro-Herbert)						X

CHRONOLOGY (CONTINUED)

DATE	SUBJECT	NEWSPAPERS					
		1	2	3	4	5	6
Oct 10	2 of 7 allegations confirmed				H S		
Oct 16	Barnes charges dropped	A		A H	A		A B F
Oct 17	Barnes charges dropped				A		
Oct 17	Editorial (pro-Herbert)		X				
Oct 17	Herbert to press no more Charges						H
Oct 26	Editorial (pro-Herbert)						X
Nov 2	Herbert denied leave to Appear on Cavett show						H
Nov 3	Herbert denied leave to Appear on Cavett show				A H		
Nov 3	Nixon approves Herbert Promotion			A H	A H		A H
Nov 4	Nixon approves Herbert Promotion						
Nov 4	Herbert receives saluting Instruction			A H			A H
Nov 5	Herbert receives saluting Instruction			A H	A H		

CHRONOLOGY (CONTINUED)

DATE	SUBJECT	NEWSPAPERS					
		1	2	3	4	5	6
Nov 6	Bob Cromie column					X	
Nov 6	Army releases Fact Sheet	A H					
Nov 7	Army releases Fact Sheet And recaps week						A H
Nov 8	Herbert to ask for Retirement	A H	H	H	A H	A H	A H
Nov 9	Editorial (pro-Herbert)		X				
Nov 9	Herbert granted leave	H					A H
Nov 9	Herbert denies he will join McGovern staff	H					
Nov 10	Herbert denies he will join McGovern staff						H
Nov 10	McGovern says Herbert to Join him in March 1972	H					
Nov 11	Editorial (pro-Herbert)						X
Nov 11	Army officers refute Herbert claims				A		
Nov 12	Herbert accused of Beating woodcutters		X				

CHRONOLOGY (CONTINUED)

DATE	SUBJECT	NEWSPAPERS					
		1	2	3	4	5	6
Nov 13	Herbert claims Army "Spotting" stories	H		H			H
Nov 14	Herbert claims Army "Spotting" stories		H				
Nov 14	Comments re Barnes Interview						B H
Nov 14	Herbert writes Congressman	A H					
Nov 14	Letter to the Editor						X
Dec 24	Editorial (only mentioned Herbert)						X
<u>1972</u>							
Mar 1	Herbert retires		X				H
Mar 8	Herbert to lecture						H
Jun 23	Herbert supports McGovern						H
Sep 15	Herbert criticizes Army		H				H
Sep 16	Corrects Sep. 15 story						X
Sep 17	Herbert appears before Gore Hearing		H				

CHRONOLOGY (CONTINUED)

DATE	SUBJECT	NEWSPAPERS					
		1	2	3	4	5	6
<u>1973</u>							
Jan 30	<u>Soldier</u> book review						H
Feb 4	<u>Soldier</u> book review		X				
Feb 5	Report of "Sixty Minutes"						A B F H
Feb 8	Col. Herbert interview				H		
Feb 11	<u>Soldier</u> book review				H		
Feb 18	<u>Soldier</u> book review			A H		H	H
Feb 26	Senate receives documents		X				X
Mar 1	Report of "Panorama" show			H			
Apr 8	Goldwater charges Herbert Deceived American people						X

APPENDIX B

LETTER TO MANAGING EDITORS

LETTER TO MANAGING EDITORS

The following letter was sent on March 7, 1974 to:

Mr. Howard^o Simons, managing editor,
Washington Post

Mr. A. M. Rosenthal, managing editor,
New York Times

Mr. James Minter, managing editor,
Atlanta Constitution

Mr. Frank P. Haven, managing editor,
Los Angeles Times

Mr. Maxwell McCrohon, managing editor,
Chicago Tribune, and to

Mr. Evarts A. Graham, managing editor of the
St. Louis Post-Dispatch

Dear _____,

I am a lieutenant commander in the U.S. Navy and a graduate student at the University of Wisconsin School of Journalism. This semester I am doing a study for my thesis of the press performance of six selected metropolitan morning newspapers in reporting the charges of war crimes and their cover-up brought by Lieutenant Colonel Anthony B. Herbert. Lt. Col. Herbert officially and in writing disclosed to Army officials his allegations in September 1970, but the charges did not become public until March 1971 when Col. Herbert told the media he would file cover-up charges against Brig. Gen. John Barnes and Col. J. Ross Franklin.

My thesis adviser is Professor Scott Cutlip who has encouraged me to do this analysis of press performance.

I have selected for this study the New York Times, Washington Post, Chicago Tribune, St. Louis Post-Dispatch, Atlanta Constitution, and the Los Angeles Times. The selection was made because each is a morning newspaper [NOTE: Post-Dispatch is an afternoon paper], serves a large metropolitan area, and represents a wide geographical spread. To avoid bias, the newspapers were selected before the start

of the research so that editorial position, if one was taken, was unknown. Even so, no attempt will be made to use the results of this study to generalize about daily newspaper performance.

Since my study is in the initial stages, I have not yet drawn any positive conclusions. I have, however, researched all the newspapers. By working around dates that stories about the Herbert case are known to have been published as well as around dates when potential news worthy incidents occurred, and also by using the New York Times Index and the Bell and Howell Newspaper Index as guides, I hope to have read and recorded all articles published in the _____ about the Herbert case. I realize that I may have recorded only a large percentage of the coverage you provided.

I am writing you for two reasons. One, to tell you that such a study is being conducted; and two, to solicit your assistance in making the study as accurate and meaningful as possible.

Perhaps the most difficult aspect of a press performance study is answering the "why" question. Some historical researchers even suggest that the "why" question should not be the concern of the researcher. I believe, however, that although it is not always necessary to answer

the "why" question, it is desirable and does tend to make a study more useful.

I have enclosed a list of the articles you published about the Herbert case, including the date of publication, the primary subject, and the apparent source or by-line. I have also enclosed a very brief, preliminary evaluation of the coverage you provided. I must reemphasize that this evaluation is preliminary because it comes at the beginning rather than at the end of the study. Unfortunately, time does not permit me to complete my study before soliciting your cooperation, assistance and comments.

It would be extremely helpful if you would provide me with a letter which would tell me if my research of the _____ has been accurate and would tell me why you played the story as you did. If I have overlooked coverage of the story you did provide, to have that information would be helpful and would prevent me from making erroneous findings about that aspect of the study.

Would you answer these basic questions for me?

1. Why did you report the Herbert story as you did?
2. Since the Army would not officially comment on the charges made by Col. Herbert until November 1971, what steps or effort did your newspaper make to verify or substantiate the information provided you by Lt. Col. Herbert or his spokesman before you, in turn, reported it to your readers?

3. U.S. Army investigations and investigative reporting by Barry Lando for CBS-TV "Sixty Minutes" (aired on February 4, 1973) indicated that many of the charges and statements made by Lt. Col. Herbert could not be substantiated and in many cases were actually denied by others. Based on this later developed information, in what way could you, or perhaps should you, have proceeded differently in reporting this story to the American people?

4. Are there any "lessons learned" concerning the reporting of the Herbert case that should be passed on to future students of journalism?

Thank you for your cooperation and assistance. Your comments will become a valuable part of my study. I also hope that my study will be of value to other journalists and students.

Sincerely,

E. A. SHARP
Lieutenant Commander, U.S. Navy

1110 Harmon Circle
Sun Prairie, Wis. 53590

Enclosures

APPENDIX C

RESPONSE FROM THE ATLANTA CONSTITUTION

THE ATLANTA CONSTITUTION

The South's Standard Newspaper

195

P.O. BOX 4689
ATLANTA, GEORGIA 30302

March 18, 1974

LCDR E. A. Sharp
1110 Harmon Circle
Sun Prairie, Wis. 53590

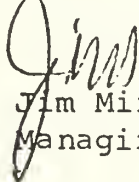
Dear Commander Sharp:

About all I can say about the Constitution's coverage of Colonel Herbert was that while he was at Fort Mac he apparently had a lot to say and found at least one of our reporters happy to quote him.

There were some obvious gaps in his story which should have been checked out from the beginning.

However the Army, as I recall, was not overly cooperative.

Sincerely,



Jim Minter
Managing Editor

JM:js

APPENDIX D

RESPONSE FROM THE ST. LOUIS POST-DISPATCH

EVARTS A. GRAHAM, JR.
MANAGING EDITOR

March 11, 1974

Lt. Cdr. E. A. Sharp
1110 Harmon Circle
Sun Prairie, Wis. 53590

Dear Lt. Cdr. Sharp:

Your list of the articles we published about the Herbert affair is essentially correct with a few small changes. The November 8, 1971, article was from the wire services, not by our staff. The fact that charges had been dropped against Gen. Barnes was included in an editorial. We did publish a review of Col. Herbert's book February 4, 1973. We also published an article by one of our Washington correspondents September 15, 1972, reporting Herbert's and Col. Edward King's criticisms of U. S. military priorities; an article about Col. Herbert's defense of lower ranks September 17, 1972; AP and the Arizona Republic article reporting a pilot's contention that Herbert beat several woodcutters, November 12, 1971; AP, an ACLU complaint against the Army November 14, 1971; Col. Herbert's retirement, AP, March 1, 1972; Armed Services Committee receives classified documents about the case, New York Times, February 26, 1973, and his libel suit against CBS and the Atlantic Monthly, wire services, January 26, 1974.

We also had two editorials in 1971 basically calling for an investigation of the charges.

As you noted, we relied almost exclusively on the New York Times and the wire services for our information about this affair, as we do with much of the material we publish which is not derived from local sources. Our small Washington bureau does not permit us to make extensive investigations of every news story.

With regard to your specific questions, the allegations by Col. Herbert certainly were newsworthy.

If Col. Herbert's charges were untrue, a matter which is still very much in dispute, then the Army was grossly derelict in failing to make public its side of the case until much later. No news organization can wait for bureaucratic wheels to turn indefinitely before publishing what it has.

I did not see any way that we should have acted differently with regard to this particular story. It was never a page 1 story for us.

I think you may be starting from the premise that Col. Herbert's allegations were not true. I suggest the evidence to support that belief is not yet in, no matter how the libel suit comes out. The greatest lesson, however, is the Army's need to react more quickly in making public whatever information it has.

- 2 -

All of this may be irrelevant. We are an afternoon paper, not a morning paper, and hence you may not wish to include us.

Sincerely yours,

Ernest A. C. L. S.
Managing Editor

APPENDIX E

RESPONSE FROM THE WASHINGTON POST

March 27, 1974

Lt. Comdr. E.A. Sharp
1110 Harmon Circle
Sun Prairie, Wisconsin
53590

Dear Lt. Comdr. Sharp:

You have indeed chosen an interesting journalistic exercise for a thesis topic. Unfortunately for me to respond in detail to all your questions, would require a mini-thesis on my part--involving interviews and research about what happened two years ago--which I simply do not have the time for. Nevertheless, some general recollections may be helpful; but they go with a caveat that I simply cannot remember days when stories may have been shortened, or dropped completely because there was no room, or other circumstances when for one reason or another some reasoned judgment was made with respect to holding a particular story.

For one thing, I think further study will confirm your initial judgment that the Post played the story in a balanced fashion with attempts to tell both sides of it. Your observation that the Army declined to comment at all for several months is quite correct and put reporters in the position of trying to find out--with considerable difficulty--if there was indeed an Army side to this episode.

It was the New York Times magazine piece of course that made Herbert famous, followed up by appearances on Dick Cavett's show. Herbert was obviously a compelling figure, unquestionably one helluva soldier and, on the heels of My Lai, his story was tough to ignore; indeed it would have been irresponsible to have ignored it.

Yet, Herbert's story also involved serious charges against two Army officers with respect to covering up atrocities and thus, as compelling a character as Herbert was, it seemed to us the story required prudence and caution, while somehow catching the drama of Herbert. Shortly after the Times piece, our national desk asked Peter Braestrup, who is an experienced combat reporter and who happened to be in Atlanta covering the Medina court-martial, to look into the Herbert case just for guidance purposes. Peter, whom I talked with today, says he had a 3-hour conversation with Herbert in Atlanta which left Braestrup with doubts about Herbert and parts of his story. He recommended caution in the handling of it. That advice was generally followed and, in hindsight, I believe it was good advice.

We did not do a separate story on the Army's belated fact sheet of Nov. 5, 1971, because we had reported--as an outgrowth of trying to find out the other side--the thrust of what was in it during the cluster of stories on Oct. 9, 10, 11 and 16 that Braestrup and I wrote. I haven't checked with other papers, but I think the Post may have been the first to point out that the first formal allegations brought by Herbert of the atrocity charges were 18 months after he was relieved of command and that he also had a \$175,000 contract for a book (which was subsequently published with the aid of the New York Timesman who originally wrote the magazine story).

As for the news of the CBS "Sixty Minutes" program on Herbert on Feb. 4, 1973, Braestrup was already at work on the review of Herbert's book, and given the limits of space and personnel, as I recall it was decided to integrate what Peter was preparing to say in his review with the Sixty Minutes material. That was done. The key points brought out on the CBS investigation were included, and Peter's review, which I feel was excellent in capturing the contradictions and the pathos of the situation, appeared on Feb. 18, fairly close to the CBS portrayal.

The review was much longer and more detailed than normal and for anyone following the case, I believe it was an excellent summary.

As for why we didn't have an item on Franklin's lie detector test, I can't say. My recollection is that the Army statement on this was put out in response to a reporter's story that appeared elsewhere and since we hadn't reported that particular story, we didn't report the new statement. In any event, I can't be certain. It may have been that that story got squeezed out of the paper for other reasons.

On the whole, the Herbert case is an excellent case study for journalists and, in my view, reaffirms the requirement to be sceptical and probing. Had it not been for the superb CBS investigative work, which I believe took 1-2 years, the "other side" of the Herbert case might never have been told. Few news operations have the time or people to spend on that kind of legwork and checking--especially when the person being checked on appears to be a martyr. In Braestrup's view, and one which I second, the type of thing that CBS did was what the New York Times should have done, after having made such a large investment in presenting Herbert's case and in effect, making him a national figure. There were two other officers facing legal charges as a result of the Herbert case, thus it was a story which demanded care and thoroughness.

Sincerely,

A handwritten signature in cursive script that reads "Michael Getler." The signature is written in dark ink and is positioned below the word "Sincerely,".

Michael Getler

APPENDIX F

RESPONSE FROM THE NEW YORK TIMES

The New York Times

229 WEST 43 STREET
NEW YORK, N.Y. 10036

March 25, 1974

Dear Commander Sharp:

This is in acknowledgment of your letter of March 7 to Mr. Rosenthal, who is out of the country this month.

The only thing we can tell you about our news treatment of the case of Colonel Herbert is that we treated it just as we treat all news developments. We reported it on its news merits when he figured prominently in the news, and tried to report all the information available to us as the news fell.

As for what steps or effort our News Department made to verify or substantiate Colonel Herbert's charges, it took the normal and routine steps in an effort to obtain additional information and balancing comment. As you have noted, the Pentagon would not comment officially on the colonel's charges.

As soon as he made his charges, our Foreign News Department informed our Saigon news bureau about them and asked them to seek out Colonel Franklin for his comment. When one of our staff correspondents in Saigon contacted Colonel Franklin's unit by telephone, he first was told that Colonel Franklin was sick. Our correspondent continued to make calls, however, until he finally got Colonel Franklin on the line and told him what he wanted. All Colonel Franklin would say was that he would not comment on the matter. We don't recall where General Barnes was at the time.

In checking hastily through our files we note that a couple of recent news items about Colonel Herbert are not on your list of articles checked.

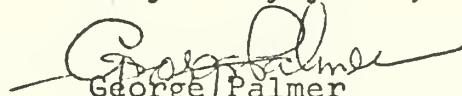
One was an item on January 26, 1974, in our Notes on People column noting that Colonel Herbert was suing CBS correspondent Mike Wallace and producer Barry Lando. The other, also in Notes on People, was a February 22 item reporting that an FBI spokesman had confirmed that Colonel Herbert had been investigated on charges of having impersonated a federal officer.

....

Incidentally, your November 13, 1971, listing is slugged: "Herbert claims stories planted by Army (UPI)." If that is supposed to be the headline The Times used over that UPI news article, it must have been changed for our later editions. The headline on the clip in our morgue file reads: "Herbert Is Accused of Beating Civilians." A photocopy is enclosed in case you saw a different news article.

One other point for purposes of clarification insofar as New York Times news coverage is concerned. The managing editor is responsible only for the content of the news columns of the paper. While the daily book review is an exception and does fall under his jurisdiction, the Week in Review Sunday section, the Sunday Book Review section and the Sunday Magazine all are outside the News Department and the responsibility of the Sunday Editor. Also, Editorials and Op-Ed Page articles are handled by the Editorial Department, which is the responsibility of the Editorial Page Editor.

Very truly yours,


George Palmer
Assistant to the
Managing Editor

LCDR E. A. Sharp
1110 Harmon Circle
Sun Prairie, Wis. 53590

Enc.
eb

APPENDIX G

RADIO AND TELEVISION SHOWS ON WHICH HERBERT APPEARED

APPEARANCES ON RADIO AND TELEVISION

Lt. Col. Herbert is known to have appeared on the following radio and television programs to discuss his allegations:

1. "The Dick Cavett Show," ABC network, Sep. 30, 1971.
2. "The Dick Cavett Show," ABC network, Nov. 2, 1971 (video tape of Sep. 30, 1971 program, with new introductory remarks by Mr. Cavett).
3. Telephone interview, WNEW radio, New York City, Nov. 2, 1971.
4. The "Today" show, NBC network, Nov. 22, 1971.
5. WETA-FM radio, Washington, D.C., Jul. 6, 1972.
6. The "Today" show, NBC network, Jan. 22, 1973.
7. "The Dick Cavett Show," ABC network, Jan. 23, 1973*.
8. The "Sixty Minutes" show, CBS network, Feb. 4, 1973*.
9. "The Lou Gordon Program," WKBD-TV, South Field, Mich., Feb. 4, 1973.
10. "The Merv Griffin Show," CBS network, Feb. 20, 1973.
11. "Panorama," WTTG-TV, Washington, D.C., Feb. 27, 1973**.

*Transcript contained in the Congressional Record, Feb. 27, 1973.

**Transcript contained in the Congressional Record, Mar. 8, 1973.

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Palmer, George, assistant to the managing editor, New York Times, letter to E. A. Sharp, University of Wisconsin, Mar. 25, 1974 (unpublished).

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_____. Regulation 635-100, change 15, Dec. 26, 1972, 4-10.

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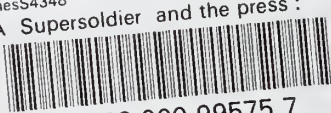
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